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ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

BACKGROUND PAPERS AND REPORTS

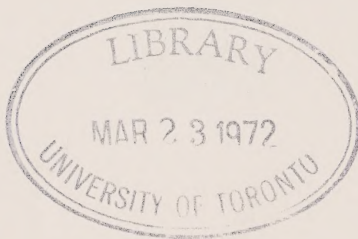
ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

BACKGROUND PAPERS AND REPORTS



The Queen's Printer of Ontario
1967

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Printed in Canada



Preface

It is fitting that the Ontario Advisory Committee on Confederation should undertake to publish this collection of studies during Canada's Centennial Year. Although Canadians have managed to live together in a successful federal experiment for one hundred years, no one can deny that many serious problems and difficulties still remain to be solved. I hope that this volume will not only prove to be useful to students of Canadian government in their consideration of these problems, but also will succeed in the wider purpose of drawing the Canadian public in general into the discussions of the country's future. It is only by means of a clear understanding of these problems and the several options that are available for their solution that Canadians can ensure that our federal system will undergo the necessary adjustments, be they large or small, to provide the country with the unity and strength required of it in the next one hundred years.

John Robarts
Prime Minister of Ontario

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Ontario Advisory Committee on Confederation

Terms of Reference

WHEREAS the Government is concerned with the position of Ontario within the framework of Confederation;

AND WHEREAS the relationship between the Provinces and between the Provinces and the Federal Government has undergone great changes since Confederation;

AND WHEREAS the Government is desirous of seeking continuing advice in all matters which will assist it in performing its part in maintaining and strengthening the unity of Canada.

THEREFOR

- (a) A committee to be known as the Ontario Advisory Committee on Confederation will be appointed, hereinafter called the Committee,
- (b) the objects of the Committee shall be to advise the Government with respect to:
 - (i) matters in relation to and arising out of the position of Ontario in Confederation,
 - (ii) the present and future Constitutional requirements of Ontario considered both independently of and in relation to the Constitutional changes and amendments which have been established or are being studied by any Province or by the Federal Government,
 - (iii) such specific matters and questions arising from the aforesaid as the Government may from time to time refer to the Committee.

Parliament Buildings,
Toronto, Ontario.
January 5, 1965.

Members of the

Ontario Advisory Committee on Confederation

Chairman

H. I. Macdonald,
Chief Economist of the Province of Ontario.
Former Member of the Department of Political Economy,
University of Toronto.

Members

Professor Alexander Brady,
Department of Political Economy,
University of Toronto.
Author of *Democracy in the Dominions* and other works.
Adviser to the Attorney General of Ontario on constitutional matters.

Professor John Conway,
Department of Humanities and Master of Founder's College,
York University.
Formerly Professor of History at Harvard University.

Professor D. G. Creighton,
Department of History,
University of Toronto.
Author of a two-volume study on Sir John A. Macdonald, and other
books and articles. His most recent study is *The Road to Confederation*.

Dean Richard M. Dillon,
Faculty of Engineering Science,
University of Western Ontario.
Formerly Colombo Plan consultant on engineering education to the
Government of Thailand.

Dr. Eugene Forsey,
Department of Politics, Carleton University.
Author of *The Royal Power of Dissolution of Parliament in the British Commonwealth* and numerous articles.

Professor Paul W. Fox,
Department of Political Economy,
University of Toronto.
Member of the Advisory Committee on Research to the Royal Commission on Bilingualism and Biculturalism.
Editor of the *Canadian Commentator* 1961-64.
Editor of *Politics: Canada*.

George E. Gathercole,
Chairman of the Hydro-Electric Power Commission of Ontario.
Formerly Deputy Minister of Economics and Development of Ontario.

Mr. Justice Bora Laskin,
Judge of the Ontario Court of Appeals.
Formerly Professor of Law, University of Toronto.
Author of *Canadian Constitutional Law* as well as many articles.

Dean W. R. Lederman,
Faculty of Law,
Queen's University.
Editor of *The Courts and the Canadian Constitution*.

Clifford R. Magone, Q.C.,
Formerly Deputy Attorney General of Ontario.
Adviser to the Attorney General of Ontario on constitutional matters.

Rev. Dr. Lucien Matte, S.J.,
President of the University of Sudbury.
Formerly the first President of the University College of Addis Ababa, Ethiopia.

Professor John Meisel,
Department of Political Studies,
Queen's University.
Author of *The Canadian General Election of 1957*, and editor of the *Election Papers* 1962.
Member of the Advisory Committee on Research to the Royal Commission on Bilingualism and Biculturalism.

Professor R. Craig McIvor,
Chairman of the Department of Economics,
McMaster University.
Author of *Canadian Monetary, Banking and Fiscal Development*.
Member of the Ontario Committee on Taxation (Smith Committee).

Professor Edward McWhinney,
Director of the Institute of Air and Space Law,
McGill University.
Author of *Judicial Review in the English-Speaking World; Comparative Federalism: States' Rights and National Power; Constitutionalism in Germany and the Federal Constitutional Court*.

J. Harvey Perry,
Executive Director of the Canadian Bankers' Association.
Author of *Taxation in Canada; Taxes, Tariffs and Subsidies; Financing the Canadian Federation*.
Member of the Royal Commission on Taxation (Carter Commission).

Roger N. Séguin, Q.C.,
President of L'Association canadienne-française d'Éducation d'Ontario.
Member of the Bar in both Quebec and Ontario.

Professor T. H. B. Symons,
President and Vice-Chancellor,
Trent University.

The Ontario Advisory Committee on Confederation

A View from the Chair

Federal and provincial governments were not thought of as competing units, almost sworn enemies, but as complementary institutions all engaged in their allotted tasks for the benefit of the whole people of Canada.¹

Such is the opinion of Professor Frank Scott on the aims of the Fathers of Confederation. Although the dramatis personae and the scenario have proceeded through sets of swift change in one hundred years, this objective remains undisturbed. Division of authority is both the Achilles' heel and the peculiar strength of a federal system of government. The genius of our own Confederation has been its capacity, through war and peace, to adopt its form and functions to ensure that "the benefit of the whole people of Canada" would remain as the undisputed goal.

Today, one hundred years after Confederation, the forces of electronic technology, the impact of demographic change, and the transformation of public expectations are all combining to force institutions to accept change at an unprecedented rate. It seems the more important then, as Professor Scott has suggested, that changes in our federal system be made consciously and deliberately in full awareness of all that we are and have been.

Such has been the approach of the Ontario Advisory Committee on Confederation. As a body of eminent public figures, it contains a profound awareness of and respect for the fundamental values of the Canadian Confederation. As a group of distinctive individuals, it reflects all the subtlety and complexity of the issues which we face. Yet, all the members are deeply committed to the abiding objective of a strong federal system. In recognition of the responsibility that the Province of Ontario bears in contributing to a strong Canada, the members of this Committee have grappled for more than two years with many of the issues confronting Ontario and Canada.

However complex the technical difficulties, I suspect that one proposition would be readily agreed to by all our members; such difficulties will be surmounted through the willingness of all partners to construct a workable federal system of government in the spirit of 1867. Accordingly, the Committee is as concerned with strengthening the will as lighting the

way. Although the following studies deal essentially with technical matters, the Committee has devoted much of its time to the broader question of goals. The flavour of that process is more difficult to capture in the printed word or in a volume of reports. However, a complete view of the work of the Committee would reveal a concern for both ends and means, an awareness of the need for aspiration as well as implementation, and the recognition of the value of faith along with facts.

When the Ontario Advisory Committee on Confederation was established in February, 1965, it was not conceived as a body which would be working towards the preparation of a comprehensive final report, a fact which is sufficient these days to confer uniqueness on the Committee. Rather, it was established to advise the Prime Minister of Ontario on questions affecting Ontario's role in Confederation. This is certainly the function the members of the Advisory Committee have seen for themselves. This role has been performed through a number of meetings between the Advisory Committee, the Prime Minister, and members of the Cabinet Committee on Confederation. At these meetings, a number of short-run and long-run questions relating to federal-provincial negotiations, potential independent action by Ontario on French-English questions, and possible changes in constitutional practice or form have been discussed.

Most of the members of the Advisory Committee have taken an active part in public discussion of matters relating to the work of the Committee. Many of them have strong and distinctive views well-known to the public. The Prime Minister has made clear that membership on the Committee is not to interfere with any member's right to speak or write publicly on any of the issues confronting the Committee. Since these public views are known to represent a wide spectrum of opinion, it can be understood that the preparation of reports reflecting an agreed Committee position is not necessarily desirable nor even in many instances possible.

Given these circumstances, these reports and studies represent only a sampling of the Committee's work. No single report could adequately express its usefulness or portray the atmosphere and spirit of its deliberations. This collection of papers includes some of the reports which have been prepared for the Committee, either by Committee members themselves or by commission. Most of the papers are technical in nature and relate only to a specific question. Although they are neither comprehensive nor completely representative of the work and views of the Committee, they will make a significant contribution to the literature and body of knowledge on Canadian federalism. Each of the papers expresses only the author's point of view with the exception of the report on economic and fiscal matters.

Much of the Committee's work has been conducted through the medium of three sub-committees: one dealing with constitutional questions, a second with economic and fiscal problems, and a third with items

that might broadly fit into the cultural sphere. Most of the papers published here relate to the work of the Constitutional Sub-Committee which has concentrated most of its time on specific questions such as the method of amending the constitution, the role and structure of the Supreme Court of Canada, the role of a province in international relations, and the proposals which have been made for changes in the Canadian Senate and second chambers in other countries. In reviewing and assessing these questions, the Sub-Committee has had intensive discussions about the need for constitutional change and about matters which would require attention in such a process.

The Economic and Fiscal Sub-Committee, which is represented in this collection of papers by a report that it prepared in the spring of 1966, prior to the final round of federal-provincial discussions within the Tax Structure Committee, has concentrated on performing an advisory role in the development of Ontario's position in such discussions. By no means were all of the Sub-Committee's recommendations adopted by the government in its formal presentations at the federal-provincial meetings in the autumn of 1966, but they did perform a valuable service in the preparation of the government's position. Since this Sub-Committee contains members of both the federal Royal Commission on Taxation and the Ontario Committee on Taxation, it is able to perform a valuable role in the consideration of these important reports on taxation.

Because of its wide range of interest, the Cultural Sub-Committee has held a number of additional meetings on matters within its general scope. The only report among these papers related directly to the Sub-Committee's work is by one of its members, President Symons of Trent University, on a cultural and educational exchange program. This report formed the basis for the establishment last year by the Government of Ontario of a cultural and educational exchange program administered by the Department of Education. The Sub-Committee, which assisted in the appointment of the Director of the program, has met with the Director to discuss projects which could be carried out within the framework of the program. The Sub-Committee has also done considerable work on the important question of French-language education in Ontario for both English-speaking and French-speaking students. It has also discussed the use of French in Ontario in other activities such as the judicial system, local government, and departments and agencies of the Ontario Government, including the possibility of creating bilingual districts within Ontario.

Some of the papers relate to questions which have been dealt with by the Committee as a whole. Included among these is the report on a possible federal capital territory for the Ottawa-Hull region, prepared for the Committee by Professor Donald Rowat of Carleton University. The paper with the most general theme in this collection is the one entitled "The Modern Federation—Some Trends and Problems" prepared by one of the Committee members, Dr. Alexander Brady, in the spring

of 1966 and revised in 1967. This paper generated a wide-ranging discussion by the Committee on the broad question: where is the Canadian federation heading? This question has been discussed further at subsequent meetings and is one of the issues that has been suggested for the agenda of the "Confederation of Tomorrow Conference".

With the exception of the summer months, the Committee as a whole has met once a month from March, 1965. One of its original members, Mr. Justice Laskin, resigned from the Committee on his appointment to the Bench in the summer of 1965. Another of the Committee members, Father Matte, President of the University of Sudbury, has been seriously ill and unfortunately unable to take part in the Committee's deliberations for most of the last year.

In conclusion, may I express my appreciation for the rare privilege of serving as Chairman of a group as energetic and dedicated as the Ontario Advisory Committee on Confederation. I am also conscious, along with all the members of the Committee, of the contribution of our Co-secretaries, Mr. D. W. Stevenson and Mr. R. A. Farrell, and the staff of the Federal-Provincial Affairs Secretariat.

H. Ian Macdonald
Chairman
Ontario Advisory Committee on Confederation

¹Presidential address to the Royal Society of Canada, 1961. Reprinted in *The Courts and the Canadian Constitution*, ed. W. R. Lederman.

The Modern Federation

Some Trends and Problems

Professor Alexander Brady

April, 1967

(Revised version of a paper prepared in 1966.)

In this major paper Professor Brady analyzes the changes in the Canadian federation since 1945 and the present problems which confront us. These problems can be traced to various sources, but one of the major problems is a fresh strong French-Canadian nationalism. He concludes that an understanding of the subtlety and complexity of the French fact on the part of English-speaking leaders is more urgent than a new constitution. Furthermore, he thinks that such understanding will establish a renewed partnership with French Canadians and thus add to the substance of Canadian federation.

The Modern Federation Some Trends and Problems

Since 1945 the Canadian federation has undergone more constant and profound change than in any two decades of its history. Its present problems are derived from varied political and social forces generated largely by the Second World War and its aftermath: industrialization quickened by war and technology, the accelerated rate of population growth, the enlargement of urban communities, the wider acceptance of the positive state in economic life, the rapid exploitation of natural resources throughout the provinces, and the dynamism of a fresh and potent French-Canadian nationalism.

The Federal Pendulum 1945-1966

The most conspicuous Canadian fact in the past twenty-one years has been a swing of the pendulum of federal power in response to economic, social and political forces. An immediate effect of the Second World War was to magnify the ambition and multiply the tasks of the national government in achieving economic stability and social welfare. The wartime leaders in Ottawa acquired and exercised decisive power in marshalling human and material resources for national survival. Their authority then resembled that of rulers in a unitary state. Without ignoring the fact of federalism, they were less obligated than in peacetime to accept its restraints. They could promptly match plans with revenue, for in the emergency they leapt over obstacles that hitherto had hampered federal ministers. In 1941, the national government acquired with provincial consent the exclusive right to impose the lucrative personal and corporate income taxes as if, in the words of Finance Minister Ilsley, "the provinces were not in these fields".

It was doubtless inevitable that leaders who had successfully geared a government for national goals in war should also desire to gear it for national goals in peace. The current climate of opinion encouraged them. Everywhere in the western world the concept of national economic planning was in the air. Keynesian ideas on contracyclical budgets appealed to practical policy-makers seeking economic stability. New visions of social welfare under the state were prevalent. The bureaucracy fashioned in wartime Ottawa perceived that rising productivity elevated the standard of living and increased the capacity of the public to pay for

welfare measures. It diligently worked out plans to distribute throughout the country, under federal direction, the expected increments of income. Likewise, pressures from a host of interested groups of many kinds furthered the same end. Federal politicians quickly appreciated the electoral advantages of employing the national treasury to satisfy the new and avid appetites for welfare services. Aware that federalism imposed restraints on what parliament at Ottawa could accomplish, they hoped nevertheless to establish for themselves a more active role in economic and social policy. In 1944 even before the end of the war, they initiated family allowances, the boldest and most costly welfare venture hitherto attempted in Canada. Soon they were sponsoring a proliferation of federal conditional grants and shared-cost programs to further national standards and circumvent the limits on federal legislative powers. These new projects involved the expansion of federal activity into areas of exclusive provincial jurisdiction, such as natural resources, social welfare, local government, highway construction, and education.

The vigorous post-war initiative of the national government, although at first encouraged by the less affluent provinces, soon came under provincial challenge. The attempt of the government after 1945 to operate a renewable rental system for the basic taxes on personal income, corporations, and inheritance failed to achieve a satisfactory fiscal equilibrium. Quebec repudiated the rental device. Up to 1952 Ontario did likewise, eventually accepted it as a stop-gap in the case of the personal income tax, but remained convinced that it was too inflexible for a time of peace and dynamic change. Whenever the agreements came up for renewal, all provinces out of hard necessity eagerly contended for higher payments from the federal treasury. Rapid provincial development and population growth made rental arrangements unstable. Under the compulsions of an industrial society, the provinces were driven to ever greater expenditures on the many services for which under the *British North America Act* they were accountable. They needed augmented revenues to meet the soaring costs of education at different levels, the medley of health and welfare expenditures in the burgeoning metropolitan areas, the constant demand for highways and more highways, and the urgent requests for projects of conservation and water control. It now seems ironic that some Fathers of Confederation viewed provincial powers as relatively unimportant. On one occasion at the Quebec Conference, George Brown had referred to them as insignificant. They may have been insignificant in the days of the horse and buggy, but with the advent of a progressive industrial society they loomed into conspicuous importance, necessitating ever larger sums of money.

In a period of remarkable economic change, the post-war tax agreements between the provinces and the national government could never be more than temporary expedients, unsatisfactory after negotiation, or even when negotiated. They constantly generated federal-provincial tensions over details of interim arrangements, with the provinces always demanding larger revenues to meet expanding services.

The recurrent financial difficulties of the provinces can be met in three principal ways:

- (i) by transfer payments in some form of grant from the federal treasury;
- (ii) by the national government yielding to the provinces more of the direct tax fields open to them under the constitution;
- (iii) by the shift of certain costly provincial functions to the national parliament either through constitutional amendment or through some form of dominion-provincial agreement.

Among these measures, constitutional amendments are particularly difficult to achieve. Barring such a catastrophe as a third world war, the major provinces would seldom freely surrender a significant part of their jurisdiction, least of all a control over natural resources. Even if persuaded to do so, it is questionable whether the provinces would actually further the national interest by transferring any of their important functions to the federal parliament and executive. Canada is one of the largest countries in the world. Its exploitable resources are heterogeneous and dispersed over vast territories and its provinces possess different environments and social situations. Geographic and economic diversification make it singularly fitted for federal rule, because only federalism appears practicable. Not by historical accident has substantial legislative power come to rest in the provincial legislatures. This regime is justified by its results: provincial ministers and their officials are reasonably close to the people served, close enough at least to understand the variety of physical and social circumstances in which citizens live. At the same time, most provinces are not so small as to involve an excessive and needless diffusion of administrative and political power.

Canadians are often tempted to seek examples from American federalism, where in late years strong centripetal tendencies are manifest. But there are profound differences between the two federations. Ten provinces exist in Canada against fifty states in the neighbouring republic, and two of the provinces, Ontario and Quebec, contain more than 60 per cent of Canada's population and an equally high proportion of its wealth and economic power. These major jurisdictions inevitably acquire a potent bargaining power in all federal-provincial relations. Their leaders exert an influence over a significant portion of the Canadian electorate, and a government in Ottawa is sensitive on how such influence is employed. Six of the ten provinces contain land areas exceeding in each case 200,000 square miles, large by the standards of many independent and influential national states and larger than any states in the American union except Texas and Alaska. Their sheer size helps to foster a powerful sense of local interest and attitude. Ontario, for example, is larger than the Federal Republic of West Germany on the one hand and Italy on the other. It has substantially more square miles than Texas and is twice the size of California. A medley of economic interests within its extensive territory comes to be connected with its political and administrative system and readily defends the federal regime. A like situation is found

in other large provinces. Area, of course, is merely one among many relevant factors in assessing the degree of autonomy appropriate for a junior government. Population and its density are others. But area is particularly important in communities growing rapidly in numbers and exploiting widely dispersed resources. A major shift in legislative power from the provinces to the national parliament would raise the spectre of an elephantine bureaucracy in Ottawa, remote from much of the country, tolerable perhaps in war, but intolerable in peace. Centralization might also impose additional and severe strains on the national party system and add to the difficulty of obtaining in parliament an appropriate consent for policies that will satisfy the diverse regions of the country.

Here no attempt is made to examine taxes and grants except in their broadest implications for federal institutions. In the Canadian, as in other modern federations, financial procedures must be periodically appraised in terms of a changing society and the ethos of the system. The venerable doctrine is still valid that governments act more responsibly if compelled to raise the money they spend. The closer the adherence to this principle the better. But, unfortunately, modern federal states can seldom rely wholly on traditional taxes for a fair distribution of revenues. Tax resources and functional responsibilities can rarely be apportioned with such nice precision that each of the federated units is financially independent. In Canada an almost chronic maladjustment has existed between functions and revenues, and grants or transfer payments from the national treasury have been a fiscal and political necessity. These payments have constituted an essential part of the mechanism to satisfy needs, reduce tensions, and further agreements. Without them the federation might not have survived. The important question for the future concerns the forms they should assume.

An argument for transfer payments now seldom disputed in principle is their use in ameliorating the special economic disabilities of certain provinces. The provinces are born to inequality, and the underprivileged resent the fact. Some have abundant resources strategically situated for development and some have few; some are consequently affluent and some are poor; some benefit generously from private investment and advancing industrialism and some benefit little. In 1926 the average income per capita in the three Maritime Provinces was 38 per cent below the average for the other six. Thirty years later the Gordon Royal Commission found that the situation had not substantially altered.¹ Recent evidence suggests some reduction in the gap, but it is still real.

Disparity in wealth means differences in revenue-raising or fiscal ability and hence in the quality of public services. The federal government has commonly tried to mitigate inequalities through payments from the national treasury and concessions in freight rates and tariff arrangements. Recent expedients of this kind are the special adjustment grants to the Atlantic Provinces and the payments to equalize tax returns per head from the three standard taxes on which the tax-split is based. Thus, by an appropriate formula, an attempt is made to equalize the revenue per

head of those provinces with large geographic concentrations of industrial and personal wealth and those without. The formula is difficult to devise in a way that will entirely extinguish complaints. Ontario, which is always a donor and not a recipient, has sometimes complained that the methods applied were unfair in that they failed to recognize her special needs due to industrial concentration and rapid municipal growth.

Whatever the technical difficulties involved in equalizing tax revenues, the principle of aiding the indigent at the expense of the affluent in the name of equity and in the interest of national unity now seems permanently lodged in the federal structure. It has undoubtedly helped to reduce discontent within the federation. Mr. Joseph Smallwood, the Premier of Newfoundland, representing the province with the lowest personal income per capita, extolled equalization as "an essential feature of the Terms of Union of Newfoundland with Canada in 1948. Newfoundland could not even survive without the continuation of equalization".² Mr. Roblin of Manitoba remarked that the less wealthy provinces view the system of equalization and stabilization as "a lifeline in the equality of Canadian citizenship in services". In the dominion-provincial conference of 1963, Mr. Pearson added his tribute: "The concept of equalization is necessary to co-operative federalism. Without that concept some of the provinces could not adequately discharge their responsibilities." The most successful result of the meetings of the Tax Structure Committee in 1966, which failed to achieve many of their other purposes, was the establishment of a new system of equalization payments to come into effect on April 1, 1967. The new equalization formula takes into account all provincial revenues at average provincial rates and will bring the revenue yield in all provinces up to the national average yield. A marked advantage of the new system is that it will perform automatically and thus relieve some of the pressures for changes in the formula at every new discussion of federal-provincial relations.

The case for a periodic review in any system of conditional grants is forcibly illustrated by the experience of the programs since 1945. Before the Second World War a limited number of such grants were given in agricultural instruction, highways, technical education and old age pensions. But during the war and especially on its conclusion, their number and variety multiplied. By December, 1962, 56 of these programs existed.³ Economic development and standards in health and welfare were promoted, either by a gift of federal funds alone, or by federal funds matched by provincial contributions. By this means, the government in Ottawa hoped to further national purposes within the sphere of provincial jurisdiction, prod tardy provinces into action, and assist all of them to cope with a plethora of functions and a paucity of revenue. From one point of view the conditional grant programs achieved initial success. Notably, they helped to secure for the poorer provinces extra money, skilful leadership, and technical guidance, permitting them either to begin services that unaided and aloof they could not provide, or to enlarge the volume of an existing service not otherwise possible. In these instances,

the grants were an invaluable instrument in the early stages of public health and welfare development.

Despite their benefits, the proliferation of conditional grants since 1945 appeared to justify some of the unheeded warnings of the Rowell-Sirois Commission on their dangers and inherent defects in a federal system.⁴ They imply a division of administrative responsibility, with its customary faults of expense, delays, frictions, cumbersomeness, and confusion. Moreover the grants fail to contribute explicitly to that strict sense of accountability for policies which provincial governments should cultivate and without which their formal autonomy is meaningless. Although conditional grants make possible some useful advances in policy, they often fail to foster in the provinces a genuine political responsibility for what is done. In many cases expert officers from federal departments give an enlightened leadership. Yet relevant is Mr. R. B. Bryce's reminder that such leadership comes "from sources other than those constitutionally responsible for the services, which really means that those who are constitutionally responsible are not in fact making the basic decisions—they are allowing themselves to be led".⁵ The national government often launched conditional grants with little or no prior consultation with the provinces, or consulted them only after it had already assumed a firm position from which it was indisposed to retreat. In either case it exerted a measure of coercion over provincial action. However strongly a province may wish to channel funds into primary education or other services of its own selection, it finds that a refusal to participate in a federal program is difficult, because its electors are prone to think that a refusal deprives them of something to which they are entitled. Here is a special type of political pressure exceedingly hard to resist. Quebec in its jealousy for autonomy and suspicion of Ottawa could afford to refuse federal proposals, but even Mr. Duplessis in his long and firm grip on office did not always spurn them. He saw the expediency of accepting some. For the leaders of other provinces it usually seemed political folly to reject them outright. Once established the grant programs were sometimes difficult to terminate because a corps of vested interests developed in their defence.

From the middle of the 1950's, the growing strains on their budgets made provincial premiers more dissatisfied with certain details of the conditional-grant system. No less urgently than ever they wanted money from Ottawa, but not on the inflexible terms prescribed by conditional grants. In 1955 the Premier of Manitoba bluntly asserted:

It is easy to visualize the disruptive effect on a provincial budget which results from the unexpected announcement of a Federal program involving major expenditure by the province. While it is a fact that in each case the province is free to elect not to participate in such a program, experience has demonstrated that it is both difficult and embarrassing for a provincial government to refuse to join . . . regardless of the resultant budgetary difficulties. In practical effect any such action on the part of the Federal Government diminishes the control of the province over its own budget.⁶

As the conditional grants for hospital insurance and welfare grew larger, they assumed a bigger place in provincial revenues, and hence

provoked greater concern in provincial governments, which were also now deeply involved in long-term plans of economic development. This concern was forcibly expressed in the federal-provincial conference of 1960. New Brunswick, Manitoba, and Prince Edward Island denounced the inequities of the system. They complained that, when a program required matching grants, it not merely made provincial budgets less flexible but operated unjustly, because every province whatever its capacity to pay must meet the same percentage of the cost. Hence some conditional-grant programs imposed a financial handicap on the poorer provinces at a time when they could least afford it. Premiers Frost, Manning, and Lesage were equally critical on somewhat broader grounds. They condemned conditional grants in particular for blurring the lines of jurisdiction and responsibility between provincial and federal governments. For Mr. Frost, the conditional grants whetted the appetite of the provinces for funds from the national treasury and thus diverted them from a proper concentration on plans for augmenting their own revenue. Mr. Manning deplored the fact that, in deciding to co-operate in a joint program proposed by the federal authority, the provinces were not really exercising their full legislative rights and initiative, although the subject might be within their jurisdiction. They were merely asked to participate in something already determined upon by federal ministers. Like Mr. Frost, he doubted that this constituted in any real sense provincial self-government. The whole trend towards these programs, he thought, "should be progressively reversed and the funds involved diverted more and more into the field of unconditional fiscal aid." Mr. Lesage expressed other variants of the same theme. He considered that the main programs were now sufficiently well established to permit the federal government to withdraw from them entirely and to compensate the provinces for the extra financial responsibilities in carrying them along. Compensation should take the form of additional taxation rights reserved for the provinces with corresponding equalization payments. From this he envisaged the happy result that each province could then employ its revenues as it saw fit within its sphere of jurisdiction.

This rising volume of provincial criticism of conditional grants inevitably influenced the thought and practice of national leaders. Mr. Pearson (when still in Opposition) in November, 1961 expressed the view that the federal government should not contribute to such programs after they were well established, that the provinces should be helped with tax concessions to maintain the programs from their own resources, and that provinces anxious to remain outside shared-cost programs should be able to do so without financial discrimination. These views clearly conformed with those earlier expressed by provincial premiers and notably by Mr. Lesage. They were the basis for new policies introduced by Mr. Pearson's government after 1963.

The federal government's revised plan for conditional grants recognized the complexity of the subject and proposed an interim scheme, to be followed after 1967 by a further review. The transitional changes were

announced on September 10, 1964, in a letter to all provinces and embodied in a statute six months later. They divided the programs into three broad categories with a distinct treatment for each.

- (i) The first group included grants for various types of research and training, the centenary works, emergencies, and five important forms of capital investment, namely, the Trans Canada highway, railway grade crossings, vocational school construction, Agricultural Rehabilitation and Development (ARDA), and municipal works. These would all operate as in the past, but would be of limited duration.
- (ii) Various agriculture and forestry grants together with those for hospital construction, camp grounds and picnic areas, and roads to resources permit opting out on the basis of federal cash compensation and a provincial undertaking to sustain the programs for an interim period.
- (iii) In the case of shared-cost programs in certain other fields, including hospital insurance, old age assistance, and allowances for the blind and disabled, opting out is made possible on the basis of a federal tax withdrawal.

Quebec promptly accepted the federal government's proposals for contracting out, whereas other provinces decided to await at least the recommendations of the federal-provincial Tax Structure Committee, then reviewing conditional grants and allied matters. In the meantime, through an extensive use of the contracting-out formula, Quebec acquired greater tax abatements for income and succession duties than any other province. At the same time, it insisted on unconditional fiscal equivalence, namely, the tax power acquired through opting out was not to be restricted by conditions on the use of the revenue.

In 1966, the federal government's position on opting out and conditional grants underwent a profound change. The Minister of Finance and several members of the government party in the House of Commons were successful in having the view adopted by the government that a continuance of the situation whereby Quebec was the only province to opt out of shared-cost programs was a danger to Canadian federalism. They argued, doubtless with some reason, that the establishment of a *de facto* special status for Quebec would lead eventually to the position of an associate state, performing public functions executed in other provinces by federal departments and agencies. To reverse such a tendency and preserve federalism, they laid down the principle that there should be "uniform intergovernmental arrangements and the uniform application of federal laws in all provinces".

At the meetings of the Tax Structure Committee in the autumn of 1966, the federal government, in return for the assumption by the provinces of full financial responsibility for hospital insurance, the Canada Assistance Plan, and the continuing portion of health grants, offered the provinces 17 points of the individual income tax with associated equalization and an adjustment payment or a special program equalization grant, which

would bring each province's annual compensation up to the amount it would receive under the shared-cost agreements. Under this offer, the provinces would have the option in 1970 of remaining bound by the shared-cost conditions for another two years, or having their adjustment payment or program equalization grant increased.

Despite strong urging by the federal government, none of the English-speaking provinces accepted the offer. Some provinces, including Ontario, declared that they would reconsider their refusal when the federal-provincial financial arrangements were reviewed in two years. Other provinces emphasized that shared-cost programs represented a useful method of ensuring federal-provincial consultation and more uniform standards of services across the country and that to abandon them would be a mistake. Nevertheless, the federal government was explicit that it would adhere to its general position, would refrain from entering provincial fields of jurisdiction, and would not renew the major shared-cost agreements when they reached their termination dates. It evidently resolved to bring the federation closer to the principle that when a government wants to spend, it must be prepared to raise the money.

The story of federation since 1945 is the story of a growing complexity and a growing interdependence among the units of the federation. The federal and provincial governments in their respective jurisdictions are all anxious for freedom of manoeuvre, for all are eager to respond to the pressures of electors. But full freedom of manoeuvre in the present federation is a will-of-the-wisp. Today a workable federalism means a co-operative federalism. With a growing interdependence between the regional parts of the national economy, every major act of a single government causing expenditure is likely to have implications for the others. New forms and fresh ideas in the arts of collaboration will need to be constantly explored and applied. But behind all that must be a determination to make the federation work by accepting the elemental fact of interdependence.

Quebec and Confederation

From the outset, Quebec exerted a significant influence on the federal system and will continue to do so. Its position and its relation to the rest of the country is of paramount importance in any review of the contemporary federation.

Quebec always differed from other provinces. Its special character was evident among other things in civil law, the role of the Roman Catholic church in education, health and welfare, the traditional customs that for generations had accumulated in the countryside, and the tight social integration of the French parish. Some provisions in the *B.N.A. Act* recognized the distinctiveness of the province. Section 94, for example, contemplated that with provincial consent, laws relating to property and civil rights should in all provinces except Quebec be unified by the national

parliament, thus in effect giving a special protection to the French law of property and civil rights.

In 1960 Quebec's distinctiveness entered a new phase. The electoral victory of the Liberals in that year was followed by something more than another variant of traditional French-Canadian nationalism, with its constant emphasis on cultural survival. A far-reaching program of reform and development was designed to augment the activities of the Quebec government, to carve out a large new public sector in the economy, to accelerate the exploitation of provincial natural resources, to encourage new industries under French-Canadian control, to increase and diversify employment, to establish hospital insurance and welfare services, to make strides in promoting educational reform, and generally to quicken the rhythms of social change. Hitherto Quebec more than Ontario had depended on industries with a low level of wages and a high level of protection. The government was determined to alter this, to invigorate stagnant parts of the economy, to quicken mobility in the labour force and to diminish the pronounced regional disparities in income that hitherto had existed. The implementing of these plans necessitated institutions and devices new for the province, such as the public ownership of electricity, the General Investment Corporation, the Deposit and Investment Fund, the Mining Exploration Corporation, the steel complex of Sidbec, and the recruitment of a new and vigorous civil service.

The replacement of private by public ownership of hydro power was intended to create a power grid across the province as a firm base for economic development and a tool for returning to the Quebec people the benefit of their natural resources. A similar role was intended for other public agencies.

It would be a simplification to assume that these far-ranging plans were merely the product of an insurgent nationalism, but certainly they were influenced by it. Although we find many policies of development like those in other large provinces, they were launched with a special emotional support and designed to give a new prestige to French Canadians. Leaders were confident that in their Quebec stronghold the French must reduce their former economic backwardness, rehabilitate their community, and assert their distinctiveness as a people in control of their destiny. "We are not defending the autonomy of the province", said Mr. Lesage at the federal-provincial conference of 1963, "simply because it is a question of a principle, but rather because autonomy is to us the basic condition, not of our survival which is assumed from now on, but of our assertion as a people".⁷ Apart from rhetoric, this feeling is expressed in mundane practices. It is characteristic that the Quebec Hydro, in seeking to satisfy its mechanical requirements for expansion, introduced a fixed preference for local producers over competitors from outside the province, a practice now widely followed by other public agencies. The apparent indifference of the Quebecers to the rest of Canada's economy was derived from an absorbing concern with their own problems and society.

The new political energy in Quebec had immediate consequences for Canadian federalism, although the major actions of Mr. Lesage's government, like those of other provincial governments, were confined to the area of its competence under the *British North America Act*. In federal-provincial relations Quebec had two major objectives: to secure from the government in Ottawa a larger share of the direct tax field, and to reduce and ultimately eliminate joint-cost programs as an improper intrusion on provincial jurisdiction and an impediment to effective economic planning. In these policies Quebec aimed to preserve its financial independence and legislative and administrative autonomy. In the first, Quebec's position was scarcely different from that of Ontario, whose constant theme in federal-provincial conferences since 1955 has been the urgent need for enlarging the tax resources of the provinces, which now have to meet heavier expenditures. "The present tax rates of the provinces", complained Mr. Frost in the federal-provincial conference of 1955, "are far out of line with their needs. At the present time the personal income tax credit allowed in the province of Quebec is only one-ninth of the Federal Government's revenue from this field, while in the province of Ontario the rental we are presently receiving for personal income tax is based upon only one-nineteenth of the Federal Government's take from this field."⁸ In subsequent years the apparent inequity of this situation, in view of provincial necessities, was repeatedly emphasized by Ontario, and after 1960 was reinforced by the pleas of Mr. Lesage.

To conditional grants and shared-cost programs Quebec's opposition was usually implacable, and through the years its arguments varied little. Its case was elaborated in the Tremblay Report of 1956, where conditional grants were condemned as insidious forms of centralization, undermining provincial autonomy. Mr. Lesage's government inherited these views, although at first it accepted some grants previously rejected by Mr. Duplessis. But on formulating and maturing its economic ideas, the government became increasingly impatient with federal policies, embracing conditional or unconditional grants, that meant interventions in the provincial field of jurisdiction incompatible with its own plans.

Quebec's chief criticism of such national programs was aimed at their inadequate recognition of the peculiar features of Quebec's society with its sharp regional contrasts. Its views were forcibly expressed and illustrated in Mr. René Lévesque's submission to the War on Poverty Conference in December, 1965. This argued that recent federal programs tended to distort Quebec's own economic and social policies, disrupt its priorities, and hamper the integration imperative for their success. Quebec had inherited two unfortunate situations that the current policies at Ottawa failed to remedy. First, an excessively large proportion of its labour force was in old industries without the dynamism of new growth and the power to pay adequate wages.⁹ Second, the immense expansion of the Montreal metropolis (with two-fifths of the population and three-fifths of the industries of Quebec) imposed so drastic a drain on provincial resources and skilled manpower as to reduce some other areas to

virtual stagnation. Consequently, the income per capita for labour in Montreal might sometimes be four times that for labour in the remote hinterland, thus seriously impairing the social cohesion of the French-Canadian community.

The federal Designated Area Programs of 1963 and 1965, which encouraged by tax concessions the establishment of industries in areas of high unemployment, were criticized by the Quebec authorities because they conflicted with their own plans on the drawing-board to regroup and invigorate regional economies by choosing carefully a number of growth centres capable of rapid and permanent industrial expansion. The Quebec plan contemplated more than a temporary palliative for unemployment; it was specially tailored to achieve a balance in the demographic and industrial development of the province and ultimately to eliminate certain persistent pockets of poverty. Hence, in sponsoring it, the government criticized the national proposal because it failed to select industries rigorously enough or to exhibit real solicitude for the peculiarities of the Quebec situation. Similarly, Quebec found unsatisfactory certain federal programs that gave direct loans to municipalities and winter works because they conflicted with its own schemes for municipal amalgamations and public works on a co-operative and regional basis. It asserted that its aims were frustrated by municipal capital invested on different lines. It complained also that its labour and social policies conflicted with those of the federal government, and emphasized that radical differences in aim and purpose made difficult a satisfactory co-ordination.

The meaning of Quebec's so-called Quiet Revolution is reasonably clear. It resulted mainly from the emergence of a fresh and vigorous political consciousness in the province, expressed by the influential figures in Mr. Lesage's Liberal party and the corps of able civil servants they recruited. These leaders and officials appreciated the plain fact that the best way to maintain the powers of government was to govern. By employing abundantly the wide authority that the constitution permits, they gave Quebec's autonomy a new and more solid significance.

The Liberal Government may have employed its powers too much and too rapidly in some sections of the society and inadequately in others. At any rate, its electoral defeat in June, 1966, suggested that it had failed to satisfy certain dissident elements of the public in the rural hinterland, in small towns and villages, and in the more impoverished sections of the cities. Its educational reforms were particularly in dispute. It had created a public school system in which a regional composite high school, in part replacing the private classical colleges, was to play a crucial part in providing education from the primary to the higher stage. Apart from being expensive and increasing taxes (a result deplored by many frugal citizens), this educational change disturbed many traditionally-minded *Québécois* because it threatened to transform the character of the society and to diminish the influence of the old local ruling elites based on the parish. At the same time, the farmers and the unskilled workers, who competed in an unstable labour market, were not convinced that the Quiet Revo-

lution for all its welfare facilities was of direct benefit to them. The disgruntled were sufficiently numerous and sufficiently well distributed in the constituencies to give the Union Nationale a majority.

Often Quebec's policies in the 1960's seem to differ only in manner from those of other provinces. All provinces now endeavour to use their legislative powers more intensively than ever before. All seek a larger part of the available tax fields. All are vigorously engaged in plans of economic expansion and social experiment. Most discover fresh resources to exploit and novel problems to solve. All are sometimes impatient with Ottawa's less fortunate efforts to meet their varied needs, and especially impatient when such efforts are made without sufficient provincial consultation. Neglect of such consultation, whenever it occurs, is the unfortunate vestige of a period when the provinces were weak and had few assets from which to bargain. Ontario, for example, little less than Quebec, found unsatisfactory the original federal Designated Area Program of 1963, the Canada Pension Plan, the Municipal Loan Fund, and the Student Loan Fund, and other recent programs initiated in Ottawa. Like Quebec, Ontario also has ambitions for regional planning and development, although it confronts actual situations quite different from those of Quebec. Indeed, almost every province has a similar story to tell: the problems of development and adjustment to development crowd in on their ministries, and each wants to determine its own order of priorities to suit the circumstances of area and people. Each wants adequate room to manoeuvre within the arena of its competence, and resents national policies that severely restrict it. Quebec, therefore, is not unique, even though it is a special case owing to a different history and culture. The underlying forces at work were cited by Premier Duff Roblin in 1963: "During the periods of depression and war, the pendulum of need swung to the Central Government; now the problems we face are concerned with current development and growth. They indicate unmistakably a swing of the pendulum to the needs of the provinces".¹⁰

Yet, for all the similarity in Quebec's policies to those of Ontario and other provinces, its political leaders never cease to emphasize the special character of their province. Mr. Lesage stressed how Quebec was more federal in spirit and much less prone to capitulate to the centralizing pressures of Ottawa. He and his colleagues viewed their province, not as one among ten, but as a cultural and national entity apart, the homeland and stronghold of the French Canadians. They believed, as Quebecers have always done, that for them federalism is important primarily because it helps to guarantee the survival of their culture. In effect, French-Canadian nationalism stimulates the intensity of Quebec's provincial spirit compared with that of any other province, and also helps to explain the single-minded zeal with which it now strives to create a modern, integrated, state-directed economy as a bulwark of its culture.

In other provinces, leaders normally argue for measures in terms of provincial material advantage with no feeling that what they advocate is designed to protect a special culture and nationality. They assume that

Canada as a whole constitutes a national state, of which the province is merely a segment. For Quebec leaders the matter is less simple. They see their province as inseparable from the French-Canadian community, to which they credit the attributes of nationality. They can never forget that the government of Quebec alone in Canada is unmistakably controlled by a French-Canadian electorate. It claims their prior loyalty, and they want to preserve intact its power. Most want to augment it.

Evidence of this nationalist thinking is the current emphasis on "a special status for Quebec". The phrase has different meanings for different people. It expresses sentiments that imply little or much in a given political context. For some it means no more than formalizing the rights and powers Quebec already has and the peculiar influence it commands in representing most French Canadians. For others it refers to what Quebec lacks and should have—a special constitutional position that would greatly enlarge its stature, would distinguish it from all other provinces, and would enable it to preserve French-Canadian culture. Mr. Lesage once explained his idea of a special status in saying that "it would be the result of an evolution, during which Quebec would want to exert powers and responsibilities which the other provinces, for reasons of their own, might prefer to leave with the Federal Government."¹¹ This was the characteristic view of a pragmatic politician, cautious and unwilling to commit himself beforehand to explicit objectives. He saw progress achieved through successive administrative compromises. For the future he left himself free to test opinion and yield to it as he thought necessary.

Mr. Daniel Johnson, when leading the Opposition, was less cautious in defining goals and more emphatic in declaring what Quebec's special status should be. In his opinion, the central fact about Canada was the presence of two distinct nations: the French-Canadian mainly in Quebec, and the English-Canadian in the other provinces. In the past these two communities had managed to combine successfully within the federal state because an equilibrium was then feasible between the forces of unity and those of diversity. But since 1945, circumstances have destroyed this equilibrium and the only satisfactory solution now is to overhaul the constitution and adapt it to the fact of two nations. Thus, Quebec should receive a special status with the larger powers of self-rule it needs, while at the same time the English-speaking provinces would be able to achieve the greater collective unity they apparently want. In Mr. Johnson's view the kind of federation established under the *British North America Act* is obsolete and should be replaced by a new constitution permitting the two nations to rule themselves and fulfil their destiny with such institutional links between them as common interests might dictate. Such was the theme of his book, *Egalité ou Indépendance*.

All variants of the special status idea, including the concept of an associate state, rest on the two-nation assumption. Early in 1964, Mr. René Lévesque, an impulsive phrasemaker, gave currency to the term "associate state in Confederation". Although he did not precisely explain his terms, he evidently intended Quebec to have wide economic, fiscal, and

political powers to fulfil its role as the equivalent of a national state for French Canadians. Others carried the same notion to more extravagant lengths. Thus, the St. Jean-Baptiste Society of Montreal, in a brief published some months earlier and submitted in November, 1964 to the Constitutional Committee of the Quebec Legislature, would transform the present federation into a confederation, Quebec and English Canada being recognized as two sovereign states, associated for specific purposes by confederate institutions and treaties subject to revision every five years.

A feature of the current discussion in Quebec on the idea of an associate state is the lack of any satisfying analysis of its legal, economic, and social implications. Proponents seem unable to come to grips with the ultimate meaning in real costs for Quebec and Canada of what they propose. Mr. Daniel Johnson admitted this fact. Shortly after his electoral victory in June, 1966, he protested to a reporter who asked whether he believed in an associate state for Quebec: "Oh, don't link me with that. I don't want to use the term 'associate state' because nobody knows exactly what it means."¹² Yet, unfortunately, such vagueness about the institutional meaning of a goal has rarely in any land inhibited the determination of an ardent nationalist. For him, in the final analysis, the claims of nationalism are ethical. The French Canadians in a variety of ways seek a tangible expression of their own national existence in the life of the country, and many are clearly dissatisfied with what they find in the present federation. They are not, any more than the English-speaking people of Ontario, of one mind except in the basic assumption that they want French Canada's identity to survive. French-Canadian nationalism in that sense is an inescapable and enduring reality that Canadians in general must learn to accept as they must also, in response to it, be prepared to make adjustments in federal institutions and practices without impairing the essentials of the system. The extent to which they do so with clear heads and genuine sympathy will affect the ultimate fate of Confederation.

Bilingualism and the Federation

A major aim among French Canadians is to preserve their language and culture. For the English-speaking Canadians the problem is how to reconcile this legitimate aim with an organic and viable national state. This problem is not simple, but neither is it insuperable. Many other countries in the contemporary world confront a like problem. Bi-ethnic and multi-ethnic states in Europe and elsewhere offer examples of how it can be resolved. It is tempting to cite them, and among other cases to emphasize the impressive one of Switzerland, which successfully sustains a genuine unity based on profound differences. Yet, for all the instances of co-existing and differing cultures in one state, there is really none closely resembling that of Canada. There is no single appropriate model for imitation. The expedients suitable for this country must be fashioned

by Canadians themselves responding to the logic of their history and experience. They must take their own past attempts as merely starting-points for a more determined effort and a greater achievement. A fuller acceptance of bilingualism in the offices of the national government is an obvious step in that achievement.

The elements of the problem are clear. In national administration in Ottawa, the French have hitherto had to restrict or to forego the use of their own tongue. For most of the time they were compelled to speak, read, and write English. Mr. F. Eugene Therrien, a member of the Glassco Royal Commission on Government Organization, reported his personal assessment of the extent to which bilingualism was accepted in the federal service and how French Canadians felt about it.¹³ He had two major criticisms: English was dominant in the internal communication of all federal departments; bilingualism was mainly reduced to the simple act of translation rather than to the co-existence of two languages, and translation was cumbersome and time-consuming.

This situation inevitably tended to discourage prospective Quebec candidates of competence, for in Ottawa they found it necessary to change language, friends, and environment. They felt like an uprooted people in an alien land. Hence, it was scarcely surprising that relatively few French Canadians reached high posts in important departments. Among those actually employed many accepted the language situation with a resigned shrug. Others in time lost heart and left. For them, in recent years, the expanding employment opportunities in the Quebec Government offered a welcome escape. Acceptance of this situation in Ottawa has been made all the more difficult with the rising tempo of nationalism in the province of Quebec. Young French Canadians increasingly feel that since apparently they can never be accepted along with their language as full partners in the federal state, they see little reason to feel attached to it. The more pride they take in their own culture, the more intolerable is the discrimination against their language.

The situation, however, has changed for the better with the recent determination of the federal government and the Public Service Commission to establish a more genuine bilingualism in the upper echelons of the federal service and in those divisions in immediate contact with a French-speaking public. It is only necessary to emphasize that this significant policy of accommodating the practices of the federal government to the cultural claims of the French Canadians can bear full fruit only after prolonged and careful effort. To require and reward bilingualism in certain offices is nationally sound. It is equally sound that the bilingual acquirement is simply a supplement to and not a replacement for other qualities essential in a competent civil service.

An increased bilingualism in the federal service is a difficult task to be pursued by the national government in the best and most equitable way it knows how. But the provinces are not exempt from responsibility in helping to make it successful. As a logical aid to national policy in this matter, the English-speaking provinces should ensure in schools and

colleges across Canada effective provisions for teaching French in order that English-speaking youth will not suffer disadvantages in competing for posts in Ottawa, and so that they will feel at home in bilingual offices. There is more, however, than simply the personal interest of English candidates for the civil service. Wide and thorough teaching of the French language would help to extend among Canadians of every origin an appreciation of French-Canadian culture as a distinctive element in their country, deeply rooted in its traditions. Bilingualism in certain strategic areas of the national life will be more acceptable to Canadians in general when it is emphasized as something indigenous, not extraneous, to the evolution of Canada's nationhood. Bilingualism indeed was inescapable in Canada from the day the country came under the British Crown. From the outset, the British rulers recognized that with a population so large, convenience as well as natural justice required that the language of the people be respected. Today, the issue is to make bilingualism a better established and a more efficient instrument in the conduct of national affairs.

Ontario's Role

In any reshaping of the cultural and institutional policies of the federation on such lines, Ontario has a conspicuous role to play. Quebec and Ontario are neighbours, and their histories, especially since 1841, have been inseparable. Future economic and social development in the valley of the St. Lawrence will almost certainly create a growing web of relations between the two communities, and will make harmonious participation in an effective federal union all the more imperative for both. Moreover, Ontario, aside from Quebec, has a larger number of citizens of French ethnic origin than any other province, or indeed than all the other eight English-speaking provinces combined. In the census of 1961 this number exceeded 647,000, or ten per cent of the population. The French by mother tongue are fewer than those by ethnic origin (some 61 per cent), but substantially exceed the total number of those in the two provinces of New Brunswick and Manitoba, where for generations French Canadians have resided and retained their language. A policy by Ontario for enlarging and entrenching the cultural rights of this minority will, therefore, be significant to a considerable proportion of the people of French extraction outside Quebec. It will testify that the most populous English-speaking province respects and seeks to preserve within its boundaries the French fact. No other province west of the Ottawa River is better able or has more reason to foster a sense of partnership between the two founding peoples.

A French-Canadian community has existed in Ontario from the genesis of the province. In June, 1793, a resolution in the legislature of Upper Canada proposed that present and future acts should be translated into French to benefit the inhabitants in the western districts and other French settlers who might later arrive.¹⁴ This was doubtless the earliest

proposal in the province for adjusting policy to bicultural circumstances. It exhibits a sage practicality in the intentions of the early legislators, who saw the advantage of employing the French language where the interests of citizens were clearly affected. Its sequel and the history of Franco-Ontarians in the nineteenth and early twentieth centuries constitute a story that cannot be told here. The major issue for this minority group concerned and still concerns their right to schools in which they are taught in their own tongue. Between 1871 and 1951 their numbers, swelled by immigrants from Quebec, grew sixfold. For them the Ontario-Quebec boundary was ethnic as well as physical. In crossing it they moved from an area where the language of the home was taught to children as normal practice, to one where French instruction was a special privilege, secured only by residents with the sanction of the Minister of Education and the local school board.

Primary French schools emerged in Ontario, and have now a long and varied history.¹⁵ They are not guaranteed by the *British North America Act* nor by any provincial statute. They have survived and developed on the basis of established custom and government policy, aided by a venerable Ontario law, the *Separate School Act*, which gives the individual citizen a free choice as to the type of school he supports with his taxes, whether separate and denominational, or public and non-denominational. It subjects the curriculum, the certification of teachers, and general administration to provincial control. The Franco-Ontarians wanted schools that would be both Catholic and bilingual, and these they developed under the *Separate School Act*. In the city of Welland, where no separate schools were available, they secured bilingual schools within the non-denominational public school system.

Early in the present century the Franco-Ontarians were attempting something very difficult at a time when their numbers were growing rapidly—efficient instruction in two languages. The supply of efficient teachers was insufficient, funds were inadequate and the standards of the schools in both languages were often lamentably low. The provincial Department of Education and its inspectors criticized the schools, and the famous Regulation 17 was issued to improve standards in English. But its method of doing so meant a reduction in the amount of French, which the Franco-Ontarians interpreted as a proscription of their language. They engaged in vigorous protests. Regulation 17 was later modified, and in due time replaced. The struggle for higher standards continued successfully on other lines. Today, the bilingual separate schools at the primary level are a firmly established part of the Ontario educational structure, exemplifying the two cultural streams.

At the secondary school level, however, a major problem is created by the inability of the separate school system to authorize tax money for high schools, except in special cases where grades IX and X have been placed under the Separate School Board.

Consequently, bilingual secondary schools, with a few exceptions, are private institutions maintained through the fees paid by the parents above

what they already must pay in educational taxes. This circumstance imposes an extra economic burden on Franco-Ontarian families inconsistent with the equality of citizenship to which they are entitled. It also seriously breaks for many students the stream of bilingual education from the primary into the secondary stage. Some drop out or enter the regular English high schools. The preservation of the language of the Franco-Ontarians is thus rendered insecure.

A new chapter in the story of bilingual education in Ontario opened in February of the present year (1967) in a conference of L'Association canadienne-française d'Éducation d'Ontario. For more than half a century this association has unsuccessfully requested state-supported denominational secondary schools. In its February meeting it agreed to ask for bilingual secondary schools, integrated in the public school system. Compliance with such a request would enable the provincial government to avoid extending support to denominational education (opposed by many citizens of the province) and at the same time would help Franco-Ontarians to obtain bilingual education for their children to the end of the high school stage.

Ottawa is a city where the Franco-Ontarians, who constitute between a fifth and a quarter of its population, would substantially benefit from a bilingual public high school. But Ottawa is of peculiar interest for another and important reason. It is Ontario's third largest city and growing rapidly. It is also the national capital and necessarily must be viewed differently from other municipalities. In this respect, it imposes a special responsibility on the provincial government.

A vocal body of opinion today emphasizes that it should become a distinguished symbol of the nation through a carefully planned development of its material features and through arrangements to make it genuinely reflect a bicultural and bilingual ideal. Some believe that these desirable objectives can best be achieved if Ottawa and Hull and their satellite municipalities are extracted from Ontario and Quebec, merged into a federal territory, and ruled by an agency accountable to the national government, which could plan its development as the national interest dictated.

There is much that is attractive in the idea of such a federal territory, but its completion presents obvious and formidable difficulties. It would mean drastic political surgery that would separate two growing cities from their present provincial hinterlands, would force them into a new political relationship, and their development would be supervised by a government with no previous experience in coping with the details of municipal administration. One of many practical problems would be that of drawing a satisfactory boundary line between the federal territory and the portion of Ontario in the Ottawa valley outside. Ottawa is likely to grow into a large city, and a boundary determined today would likely be irrelevant to circumstances twenty-five years hence. The issue of divided jurisdiction might then arise in a new and no less embarrassing form.

One fact needs no labouring. The Ontario Government has unlimited scope to collaborate at any time with the federal government and the National Capital Commission, to further Ottawa's growth both as an attractive national capital and as an Ontario city. There is, of course, no anomaly in a federal capital being situated within a province, and it need suffer from no disability. Vienna is not merely the capital of the federal republic of Austria, but is also one of the provinces of the federation. Berne is both the capital of the Swiss Confederation and also of a canton bearing the same name. In these instances, what seemed most practical was adopted, and the same rule of practicality must apply to the problem of Canada's capital. Through the expenditure of federal money, Ottawa and its surroundings have already improved remarkably in physical appearance, and could improve even more in this and other respects should the Ontario Government accomplish two things. First, secure in some form, perhaps through a metropolitan type of administration broadly on the Toronto pattern, a consolidation of the satellite municipalities about Ottawa, which would facilitate more effectual planning of development and easier collaboration with the National Capital Commission. The government has already taken the initial steps towards achieving this end. Second, the creation in the Ottawa area of a bilingual district, wherein both English and French would be recognized as official languages. If at the same time a public bilingual secondary school were established, the capital city would at once assume a character in which French Canadians no less than the English could take more genuine pride. An improved position for Hull is also needed. This can come from the Quebec Government, consolidating the municipalities of the area and also from the federal government spending more money than it has been inclined to in the past within the Hull municipality. But whatever is done on the Quebec side of the Ottawa River, Ontario has the opportunity to shape the course of development that will make the capital more worthy of the nation.

The Constitution and the Federation

During the past five years in Quebec and to a lesser extent in the English-speaking provinces, many have advanced the view that Canada urgently needs considerable constitutional changes or even a brand-new constitution to replace the *British North America Act* and to hold the country together. Some proponents of this view exhibit confusion about the character of the constitution, and it is relevant here to make one or two points clear. The constitution of Canada is not contained simply in the *British North America Act*, although that statute is one of its cornerstones. The constitution of Canada, like that of Britain from which it evolved, consists of the fundamental laws and usages of the land, regulating the organs of government, defining their functions, and insuring the rights and liberties of citizens. It is a complex fabric of statutes, conventions, usages, and court decisions. The *British North America Act*

is one of the indispensable and fundamental laws in this fabric. It joined the original provinces in a federal association, prescribed for it a framework of monarchical and parliamentary institutions, and distributed legislative power between the Dominion and the provinces. But it is supplemented by many other statutes, including of course its amendments, and by a body of conventions and usages governing the exercise of political power in the country.

When it is proposed that the constitution should be changed, it is pertinent to ask, what part of the constitution? The statutes, the numerous conventions and usages, or everything? Some proposals made in contemporary Quebec clearly envisage radical changes in those sections of the *British North America Act* that distribute power in the federation with the purpose of making Quebec a more independent political entity. The other nine provinces are unlikely to agree to any drastic amendments of this kind. They would usually argue that the *British North America Act* as interpreted by the courts now leaves with Quebec and other provinces substantial powers. Doubtless, in some cases, it would be advantageous to have these powers more clearly defined and modified in certain details. This kind of clarification and change can perhaps best be achieved in individual instances as inconveniences and undesirable situations are demonstrated. This was done in the amendments concerned with old age pensions in 1951, the retiring age for judges in 1960, and disability pensions and benefits in 1964. These amendments were all effected with the unanimous consent of the provinces.

Today there is clearly a genuine difference of outlook between Quebec and the other provinces on the question of altering the constitution. The upsurge of French-Canadian nationalism has led to a hungering for a new status in Quebec that has no counterpart in other provinces. Quebec leaders, however, may become convinced that this appetite for constitutional change may be satisfied by agreements and understandings between the federal and provincial governments on matters of economic and social development. Federalism today, after all, rests not merely on a distribution of legislative powers, but also on agreements reached through consultation on how powers are to be employed, which means a remarkably flexible federal system, subject to change according to circumstances, and that is precisely what Canada at present enjoys. The constitution imposes no serious handicap on the eleven governments exploring together fresh policies of vital concern to all, and necessary to ensure the economic and social progress of Canada. Neither does it impose any handicap on the various governments recognizing more clearly than ever in the past, the fact of two cultures and two languages.

In discussing the constitution, it is relevant to remind ourselves that Canadians have hitherto dismally failed to agree on one important constitutional matter: how to alter the distribution of legislative power between the federal and provincial governments without resort to the undignified anachronism of requesting the parliament at Westminster to amend one of its own statutes, for which it is now in no way responsible,

and in which it can have only a secondary interest. The unfortunate story of the Fulton-Favreau formula might have had a different ending but for the new nationalist mood in Quebec. Yet one may still repeat without embellishment the remark in 1949 of Mr. St. Laurent: "The United Kingdom authorities, I will not say resent, but do not like, the position in which they are placed of having to rubber-stamp decisions for Canadians made by the representatives of Canadians, and having to do it because no other procedure has yet been devised in Canada for implementing these decisions. I believe we must recognize that either Canada is a sovereign state or she is not. If the former is true, then Canada must act as an adult nation, and assume her own responsibilities."

Footnotes

¹*Final Report of the Royal Commission on Canada's Economic Prospects* (Ottawa, 1957), 403.

²*Proceedings of the Dominion-Provincial Conference of 1960*, 95.

³*Federal-Provincial Conditional Grant and Shared-Cost Programs, 1962* (Ottawa, 1963), 6-9.

⁴*Rowell-Sirois Report*, I, 257-9.

⁵*Report of the Proceedings of the Fifth Annual Conference*, Institute of Public Administration of Canada (1953), 374.

⁶*Proceedings of the Federal-Provincial Conference, 1955*, Preliminary meeting, 34-35.

⁷*Report of the Federal-Provincial Conference, 1963*, 40.

⁸*Proceedings of the Federal-Provincial Conference, 1955*, 20-21.

⁹Such as tobacco, leather, rubber, textiles, clothing and furniture.

¹⁰*Proceedings of the Federal-Provincial Conference, 1963*, 58.

¹¹Quoted in *The Telegram*, Toronto, October 14, 1965.

¹²*Toronto Daily Star*, June 15, 1966.

¹³*Report of The Royal Commission on Government Organization* (Ottawa, 1962), I, 67-77.

¹⁴*Journals of the Legislative Assembly of Upper Canada, 1792-1804*. Sixth Report of the Bureau of Archives for the Province of Ontario. (Toronto, 1911), 23.

¹⁵Their history is traced in *Report of the Royal Commission on Education in Ontario*, known briefly as the *Hope Commission Report* (Toronto 1950), chapters 16 and 17. Much of the past controversy connected with them is narrated by Franklin A. Walker, *Catholic Education and Politics in Ontario* (Toronto, 1964).

The Nature and Problems of a Bill of Rights

Dean W. R. Lederman

November, 1966

This paper was originally published
in the
Canadian Bar Review, vol. 37, March, 1959

Dean Lederman's deceptively simple thesis is that the demand for a Bill of Rights simply reflects the "age-old demand of citizens for justice". He concludes that the best constitutional guarantees of justice are those that "safeguard the democratic character of our legislative bodies, the high quality and independence of the courts, and the fairness of procedure in both".

The Nature and Problems of a Bill of Rights

When we ask to have a Bill of Rights declared or defined in some authoritative legal form, what are we really seeking? What does this mean in the constitutional and legal context of a modern state, not to mention the wider international sphere of our interdependent world? My thesis appears deceptively simple—that here we have nothing more nor less than the age-old demand of citizens for justice. To spell out a Bill of Rights is to give some sort of expression in general terms to the deep expectation and claim of the citizens of a country that their legal system shall be a decent and just one both in its general implications and its specific details. Alternatively, this claim for justice frequently appears as a demand for the Rule of Law, and to spell out what this phrase means in general and in detail is much the same thing as working out the meaning of a comprehensive Bill of Rights. In other words, to ask for the Rule of Law is to seek the Rule of Just Laws.

Whichever way one puts it, this is a wide-ranging search and also basically an ethical one. To pursue it properly means eventually to weigh the quality or value of all the principal parts of the legal system for the persons and circumstances contemplated by the many rules of law these parts respectively contain. I believe this to be very much worth doing, but the true nature and magnitude of the task ought not to be underestimated. More specifically, it ought to be appreciated that one does not finally or fully define and implement the values of a Bill of Rights or of the Rule of Law in one simple operation. Rather, adherence to the standards of a Bill of Rights or the Rule of Law is a complex process which permits and promotes progress to better things, but which also calls for considerable legal change and adjustment at the hands of impartial courts and democratic legislatures from time to time, and indeed until the end of time. Each of us must live in a world crowded with other human beings and with things and events. There is much that remains the same but also much that changes, and we must pursue our fate taking account both of the constant and the changing factors, striving to control them for the better where we can. Accordingly, so far as this control can be exercised by the public order of a legal system, we must think in terms of an ongoing process rather than a single achievement. A Bill of Rights then may be a highly useful landmark on a continuing journey, but it is in itself neither a beginning nor an end. With this in mind, we now turn to some of the problems that a Bill of Rights poses for the processes and standards of a living legal system.

Rights and Duties Distinguished from Freedoms or Liberties

One of the characteristics of discussion and disputation about a Bill of Rights is that the words "right", "duty", "liberty" and "freedom" are critical terms and yet are extensively used with vague and overlapping meanings. But if we are to understand the problems posed by a Bill of Rights, there must be some real degree of precision and discrimination about these meanings. Fortunately, analytical jurists like Sir John Salmond and Professors W. N. Hohfeld and Hans Kelsen have provided some discriminating terminology to describe the different types of jural relations, which is helpful at this point. The basic jural conception, as Kelsen emphasizes, is that of duty—of a bond of legal obligation subsisting between two persons. A is bound by contract to pay B one hundred dollars—here we have a single bond of specific obligation subsisting between two designated persons which, looked at from A's point of view is a duty, and looked at from B's point of view is a right. The thing to notice for present purposes is how specific this legal relationship is both respecting the persons concerned and what the one is to do for the other. Of course the specific conduct in a right-duty relationship may be and often is negative rather than positive. When this is so, oftentimes we find many persons on the duty side of the equation. For example, this is the basis of the conception of property in the law—A is the owner and occupier of Blackacre, which means that all other persons are under a duty to refrain from making entry on Blackacre except as A permits. Here we see that the holder of the right and the forbidden conduct are both definite and specific. And on the duty side of this picture all comers are affected by present obligation or duty, and this too is definite and specific. Also, much of the criminal law consists of closely defined prohibitions (negative duties) addressed to all comers. Strictly speaking, it is to these relationships of presently subsisting specific obligation that the use of the words duty and right ought to be confined.

The conception of power in the law differs from that of duty only as a matter of timing. He who possesses a legal power not yet exercised is legally qualified to impose a specific right-duty relationship, though he has not yet done so. The classic example in private law is the agent who has been empowered to buy a house for his principal and thus to create reciprocal right-duty relations between his principal and a vendor in the future, if and when a suitable vendor turns up. The point for present purposes is that such capacity or power of an individual is potentially as specific in the regulation of persons and conduct as the duty is actually and presently specific in these respects.

What we should now notice is that some of the "liberties" or "freedoms" so-called, which we greatly value, belong juridically in this specific realm of well-defined legal regulations that is in the field of rights and powers in the sense explained. For example, "freedom" from arbitrary arrest is the total picture given by the interaction of certain

rights and powers: the right of everyone to be free of forceful interference with his physical person by virtue of the torts of assault and false imprisonment, except where such interference is justifiable because it is the exercise of the overriding power of arrest for reasonable suspicion of crime, which power is given policemen and private citizens by the Criminal Code and the common law. Similarly the "right" to vote is a power in the strict sense, at least between elections. So also the Canadian Bill of Rights speaks of "the right to retain and instruct counsel without delay" (which is strictly speaking a power) and "the right to a fair hearing" (which is a proper use of the word right in the strict sense).

Perhaps enough has been said to establish that the right and the power, because of their specific and definite obligatory content, belong together for purposes of analyzing the implications of a Bill of Rights. For this purpose, rights and powers must be contrasted with liberties, freedoms or privileges which, while they are essential concepts of a legal system, nevertheless lack the specific and detailed obligatory character of duties and powers. In the Canadian Bill of Rights we find declared the freedoms of religion, of assembly and association, of speech and of the press. (The latter two could be consolidated as freedom for the expression of information and ideas). What then is the juridical nature of these freedoms, liberties or privileges, as they are variously called?

The concept of liberties or freedoms in a duly precise scheme of legal terminology is the concept of residual areas of option and opportunity for human activity free of specific legal regulation. In such areas of conduct there are neither affirmative legal prescriptions nor legal prohibitions—a man is at liberty to act or do nothing as he chooses, free of obligatory instruction by the law either way. Now to call these areas or classes of conduct residual is by no means to disparage them, far from it. Indeed, in a democratic country they are large and important areas, and one of the principal things a Bill of Rights attempts to do is to safeguard their essential boundaries. Only a relatively small portion of the total of actual or potential human activity is regulated in detail by specific legal duties, whether positive or negative, and life would be intolerable if this were not so. Indeed, just here lies one of the differences between democracy and dictatorship for under a dictatorship there is in a sense too much law. The point is rather aptly made by the saying that, in a democratic country what is not forbidden is permitted, whereas in a totalitarian country what is not forbidden is compulsory.

But, if liberty is a matter of option and opportunity free of legal instruction, in what sense do liberties or freedoms touch and concern the law or depend on it? To take just two examples, why is a person's liberty to express a political opinion or worship as he pleases, any concern at all of the legal system? Certainly, such options and opportunities are not directly created or specifically defined by the law or the constitution, as is my power to vote or my right to collect one hundred dollars from a person who has contracted to pay me this sum. Nevertheless,

there are two important senses in which freedoms or liberties depend on the legal system. Though they are not the specific creation or gift of the law, they have their legal features and hence are properly included in the scheme of working jurial ideas.

In the first place, by the specific prohibitions found in the classic crimes and torts, the legal system ensures a general state of public peace and order, and thus makes the areas of freedoms and liberties meaningful as realms of peaceful choice. In other words, the law of crime and tort safeguards each man's areas of option and opportunity against private coercion at the hands of other persons. My freedom (within broad limits) to do what I please with my own parcel of land would mean little without the laws against trespass and violence. But note also that the laws against trespass and assault tell me nothing whatever about the use I am to make of my land, if any. They just leave me there in peace. Accordingly, peaceful human activity in such areas of freedom depends on these basic conditions of law and order. In this general sense of dependence on the portions of the legal system relevant to peace and order, it is proper to speak of freedom under law.

In the second place, we depend on the law to define the outside limits of the respective areas of freedom or liberty in the total realm of actual or possible human activity. What is not forbidden is permitted, but certain things must be and are forbidden. In the words of Chief Justice Duff:¹

The right of public discussion is, of course, subject to legal restrictions; those based upon considerations of decency and public order, and others conceived for the protection of various private and public interests with which, for example, the laws of defamation and sedition are concerned.

To speak generally, this means that when you have defined the extent of specific legal regulation in terms of existing duties, *ipso facto* you have drawn the outside boundaries of the areas of liberty or freedom. To delineate the unregulated area you must first define the regulated area, to do which is strictly a legal matter. So, in this residual sense the extent of liberty or freedom in some given respect is a matter of legal definition and properly has its place in the working concepts of the lawyer or jurist. For example, as Chief Justice Duff points out, the law forbids the uttering of defamatory, seditious or obscene words, and there specific legal prohibition stops. At the boundary so marked, freedom of expression starts, and now the law takes no hand at all except to stop riots or other breaches of the peace. Beyond this boundary the law does not tell a man what to say or what not to say, nor does it compel anyone else to listen to him or to assist him to be heard by publishing in some way what he has said. So far as the law is concerned, he is on his own, and the factors and pressures in his choices and efforts for self-expression are extra-legal ones.

This residual and unspecified character of liberties or freedoms in relation to specific legal obligation is critical when we come to consider the relation of public legislative power to liberties or freedoms. Freedom of expression, for example, is not a single simple thing that may be granted

by some legislature in one operation—it is potentially as various, far-reaching and unpredictable as the capacity of the human mind. Freedom of expression is the residual area of natural liberty remaining after the makers of the common law and the statute law have encroached a little by creating inconsistent duties as explained. This line of thought has important implications for the distribution of law-making powers in a federal country like Canada. It is difficult if not impossible to consider freedom of expression as a single simple thing that is the subject of a grant by either the federal Parliament or the provincial legislatures. The federal question is not which legislative authority may give it, but rather which may take it away in this or that specific respect in the manner explained. In the words of Mr. Justice Rand:²

Strictly speaking, civil rights arise from positive law; but freedom of speech, religion and the inviolability of the person, are original freedoms which are at once the necessary attributes and modes of self-expression of human beings and the primary conditions of their community life within a legal order. It is in the circumscription of these liberties by the creation of civil rights in persons who may be injured by their exercise, and by the sanctions of public law, that the positive law operates. What we realize is the residue inside that periphery. Their significant relation to our law lies in this, that under its principles to which there are only minor exceptions, there is no prior or antecedent restraint placed upon them: the penalties, civil or criminal, attach to results which their exercise may bring about, and apply as consequential incidents. So we have the civil rights against defamation, assault, false imprisonment and the like, and the punishments of the criminal law; but the sanctions of the latter lie within the exclusive jurisdiction of the Dominion. Civil rights of the same nature arise also as protection against infringements of these freedoms.

So, to repeat, the question for Canada is: which legislative body may encroach on what areas of liberty and to what extent? In the example just used, the limitation of freedom of expression, the encroachments made by the crimes of sedition or treason are found in the Criminal Code of Canada, whereas those made by the tort or delict of defamation are within provincial legislative power. So, in this sense of the power to make some specific encroachments, the present constitutional position in Canada would seem to be that legislative jurisdiction over freedom of expression is somewhat divided.

But, having reached this point, one finds that there may be different kinds of encroachment—some justifiable and others not justifiable, the latter being trespasses on essential parts of the areas of freedom. The necessary implication of the *Alberta Press* case³ seems to be that there is an essential core of the area of freedom of expression that must be preserved from legal encroachment if our national democratic Parliament is to have the motive power of a free public opinion that is for it the breath of life. Thus provincial legislative encroachments may not breach this inner boundary, though they may pass an outer boundary from the point of view of defamation and civil compensation. Furthermore, as Mr. Justice Abbott noted in *Switzman v. Elbling*,⁴ this reasoning of Chief Justice Duff in the *Alberta Press* case is a double-edged sword—for the sense of it is necessarily to imply that the same inner boundary should stand likewise against legislative encroachment by the federal Parliament

itself. If this is correct, then the Supreme Court of Canada is specially entrenching essential freedom of expression by necessary implication in its interpretation of the British North America Act. Special entrenchment here means that duties or powers inconsistent in essential respects with freedom of expression may not be enacted by the ordinary statutes and legislative majorities of either a provincial legislature or the federal Parliament. Only a constitutional amendment, as in the United States, could then effect this object.

A Bill of Rights in a federal context then requires us to think in terms of withholding from both Parliament and the provincial legislatures legislative power to encroach upon essential parts of the areas of freedom by ordinary statute. Yet this cannot be the whole picture, for freedom cannot be unlimited—some legislative body must have some degree of power to impose by ordinary statutes certain limitations desirable in the public interest. Obviously, this power of enacting necessary limitations for this or that type of freedom may be assigned to the provincial legislatures or the federal Parliament or indeed may be shared by both as concurrent powers under the double-aspect doctrine well known to our constitutional law. Full implementation of a Bill of Rights in Canada would seem to call for attention to both these matters. We must assign some degree of power to make legislative encroachments by ordinary statute on this or that field of liberty, yet also we should draw an inner boundary for such fields beyond which neither Parliament nor a provincial legislature can pass. Breaching the inner boundary would require constitutional amendment. So far, with the possible exception of Mr. Justice Abbott, the judges of the Supreme Court of Canada seem to be addressing themselves only to the problem of distributing legislative power to limit freedom between Ottawa and the provincial capitals, without erecting an inner fence against such limitations by ordinary statute coming from either direction. Even so, just to distribute limiting power is difficult enough, because areas like those of freedom of expression and religion are so wide, various and indefinite in extent that they may be approached from many different aspects with a view to limitation. The application of the double-aspect doctrine to confer concurrent powers would seem, to some extent at least, to be unavoidable in the nature of these situations. By way of contrast, problems in the distribution of powers to regulate banking or the solemnization of marriage, to take just two examples from the British North America Act, are relatively much more simple.

These considerations serve to remind us that the problem of the amendment of the Canadian constitution arises if one contemplates a Bill of Rights for Canada, for such amendment would likely be necessary if we are to have a specially entrenched Bill of Rights. It is doubtful how far the Supreme Court of Canada could or would go in developing such entrenched clauses by necessary implication, though some people think the wise thing to do would be to leave the matter to the Supreme Court for gradual development along the lines already started by Chief Justice

Duff. On the other hand, if there is to be formal constitutional amendment, under the present state of our constitutional law probably this requires the unanimous concurrence of all the provincial legislatures and the federal Parliament—a condition not likely to happen. This points up our need for some constitutional amending process like that which obtains in the United States or Australia. Prime Minister Diefenbaker's Canadian Bill of Rights is to be an ordinary statute of the federal Parliament, and so would enjoy no special constitutional status. It would not limit the provincial legislatures nor, indeed, preclude a later repeal by the federal Parliament itself. Nevertheless, a Canadian Bill of Rights may be well worth doing as an ordinary federal statute. My own reasons for thinking this to be so will appear later. Meanwhile, we turn to another class of problems posed by attempts to give effect to a Bill of Rights, whatever its constitutional or legal form.

The Bill of Rights as a Declaration of General Principles

A Bill of Rights is usually expressed in very general terms, that is, in words that denote concepts running at a high level of abstraction or generality. A comprehensive set of such principles, for instance as one finds them in the United Nations Declaration of Human Rights,⁵ reaches to every part of the legal system of a modern country. In fact, the United Nations Declaration specifically states that "The General Assembly Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations. . . ." Then come thirty articles which are in effect standards to which the legal system of a democratic country in all its departments and details should conform. For example, consider the following:

Article 9

No one shall be subject to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

To determine the way in which we measure up to these principles or work them out in detail in Canada, one must review the judicature statutes and also the whole of the codes of civil and criminal procedure, including evidence, confessions, burden of proof, bail, habeas corpus, and so on. We discern when we do this that much of the secret of the fairness of a British system of criminal trial lies in the independence of the judges and such specific detailed rules as the following: the charges must be precise and detailed so that the accused knows exactly what allegations he must meet; the prosecution must prove the guilt of the accused beyond a reasonable doubt; a confession obtained by the police

or anyone else cannot be used against the accused unless it was given by him voluntarily. It is apparent that the general principles of articles 9, 10 and 11 would mean little or nothing unless they were implemented in detail in some such way as this.

Indeed, here is the key to the reasoning of those who claim that general declarations of rights are either unnecessary or useless. The argument goes like this: if you have the necessary mass of detailed procedures and rules for fair trial, then you do not need highly abstract general exhortations on the subject. On the other hand if you do not have this detailed legal equipment for fair trials, abstract declarations, whatever their legal form, will not avail the little man who finds himself in the hands of the police. There is a lot in this, and I am enough of a common-law lawyer that if I had to choose between the high-sounding general declarations and the volumes of detailed rules about the judiciary and procedure, I would take the latter. But do we have to choose? Is it not a positive advantage to have both? It is true that such general principles mean little unless worked out on a massive scale in precise detail, and yet we need also to appreciate the general implications of what it is that we are doing in detail. Particular detailed rules cannot be properly understood or kept in their respective places as part of a reasonable system unless we pursue the general implications as far as the mind can reasonably reach. Only thus can we bring order and purpose to the mass of detail in our laws. Dean Roscoe Pound, possibly the leading philosopher of the common law in our time, has said:⁶

William James tells us that "the course of history is nothing but the story of man's struggle from generation to generation to find the more inclusive order". Certainly such has been the course of legal doctrine. . . . In law this means an endeavour to eliminate the arbitrary and illogical; a conscious quest for the broad principle that will do the work of securing the most interests with the least sacrifice of other interests, and at the same time conserve judicial effort by flowing logically from or logically according with and fitting into the legal system as a whole.

The point is that general principles and their detailed implications go together in a legal system. They are complementary one to the other. There is necessarily a constant interaction between the general and the particular in living legal processes. For instance, when one reads the thirty articles of the Universal Declaration of Human Rights of the United Nations, one can see that most if not all of these very general principles are derived from (that is, logically express the general implications of) the modern constitution and legal systems of the western democratic nations like Britain, Canada, the United States and France. For example, article 25 of the Universal Declaration states in part:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

This expresses in abstract terms the purport of the development of the welfare state in western countries during the past one hundred years. It gives the general implication of thousands of pages in the official books

of statutes and regulations covering children's allowances, old age pensions, health and unemployment insurance, workmen's compensation, graduated income taxes, and so on.

This reasoning affords the chief basis for my own view that the Canadian Bill of Rights is well worth doing, even though it takes the form of an ordinary federal statute—a relatively modest form for such a document. It would still be an authoritative expression by the Canadian Parliament of valid general standards, and would give leadership and promote education in these matters, though strictly speaking its application is confined to the federal part of the Canadian legal system as defined in the British North America Act. Law is not primarily a matter of coercion and punishment at all, it is primarily a matter of setting standards for society that attract willing acceptance because they offer some measure of justice.

Nevertheless, in this imperfect world, there are difficulties in following through the implications of general principles for specific and detailed legal action that should not be underestimated. A Bill of Rights does not implement itself; it needs to be worked out in detail by judges, legislators, lawyers and citizens who possess only imperfect powers of reason and moral insight for the task. One of the difficulties with general principles is that at times they overlap and conflict so far as their relevance to particular problems is concerned. For example, the Universal Declaration says in the first part of article 23 that "Everyone has the right to work" and in the last part that "Everyone has the right to form and join trade unions for the protection of his interests". The union shop or even the closed shop may well be vital to the effectiveness of trade union organizations, and yet they deny the right to work of the man who refuses to meet the conditions of union membership. The right-to-work laws being promoted in several of the states of the United States are directed against the union shop and the closed shop. Which rights have precedence here, those of the individual man or the organization man? And what of the interests of the whole community of citizens? Also, to give another example, the Universal Declaration speaks of freedom of religion and of freedom to manifest one's religion "in teaching, practice, worship and observance".⁷ But it speaks also of the right to medical care,⁸ education⁹ and of the right to life itself.¹⁰ Are parents entitled in the name of free observance of sincere religious beliefs to deny to a child the blood-transfusion that would save his life, or to deny him all normal education because the state school system is regarded as wicked?¹¹

Such issues of conflict arise again and again in any legal system, whether or not there is a formal Bill of Rights. One of the principal tasks of our legislators and judges is to work out compromises that resolve such conflicts as far as possible on fair terms, and to give these compromises expression in legal decisions and rules. A Bill of Rights very properly exhorts us to direct our minds to the general implications for justice of detailed legal action, but it is quite illusory to think that a Bill of Rights will do away with difficult conflicts between different persons

and groups and eliminate the need for painful compromise at many points in the operation of our legal system.

Conclusion: The Importance of Procedure

From what has been said in the preceding parts, it is apparent that the legal system must in some measure undergo a continuous process of adjustment to changing conditions in our society. New conditions give rise to new conflicts of interest, so that fresh compromises are called for. Old equilibrium points established by law between freedom and restriction may require to be reviewed and altered. The primary agencies for making these adjustments are the legislatures and the courts, so that in the end the best constitutional guarantees of justice we can hope for are those that safeguard the democratic character of our legislative bodies, the high quality and independence of the courts, and the fairness of procedure in both. It is principally in these ways that our constitutional processes seek to provide for the best that man can accomplish in reasonable thought, social research and moral insight as the basis for official decision, however partial these powers of reason and insight may be from time to time. In particular, an independent judiciary of high quality would seem a necessity for the tasks of adjusting and also safeguarding the inner boundaries surrounding the essential core of our freedom.

Footnotes

¹Reference *Re Alberta Statutes*, (1938) S.C.R. 100, at p. 133.

²*Saumur v. City of Quebec*, (1953) S.C.R. 299, at p. 329.

³See *supra*, footnote 1.

⁴(1957) S.C.R. 285, at p. 328.

⁵The Universal Declaration of Human Rights is given in full in (1949), 27 *Canadian Bar Review* 204.

⁶Juristic Science and Law (1918), 31 *Harvard Law Review* 1047, at pp. 1062-3. See also Sir F. Pollock, *A First Book of Jurisprudence* (2nd ed., 1904), p. 81.

⁷Art 18.

⁸Art. 23.

⁹Art. 20.

¹⁰Art. 3.

¹¹*Perepolkin v. Supt. of Child Welfare* (No. 2) (1957), 11 D.L.R. (2d) 417.

The Provinces
and the Protection of
Civil Liberties in Canada:
The Province of Quebec

Professor Edward McWhinney
and *Armand de Mestral*

February, 1967

Many of the proposals advocating changes in the Canadian federal system have included suggestions for entrenching a Bill of Rights in the Constitution. This suggestion appears to have a great deal of support among a wide spectrum of reformers in the Province of Quebec. During the Quebec provincial election of 1966, both the major political parties included civil rights planks in their platforms. Professor McWhinney's paper sets out the past position of civil liberties in Quebec and reviews the important changes that have occurred in the years of the Quiet Revolution. The paper illustrates the improvements that have been made as well as showing the areas in which progress is still required.

The Provinces and the Protection of Civil Liberties in Canada

This study, which stems from detailed studies carried out by Armand de Mestral, a recent McGill University law graduate, under my personal supervision, surveys the law and practice in the province of Quebec for the protection of Civil Liberties. The subject assumed an especial importance during the 1966 provincial elections in Quebec because both main parties—the Lesage Liberal government, and Daniel Johnson’s opposition Union Nationale party—became publicly committed to strengthening and protecting Civil Liberties. Mr. Daniel Johnson’s party, in particular called for the establishment of a provincial office of Ombudsman, and also for enactment of a provincial Bill of Rights. The more radical, younger, and more intellectual elements in Quebec society, especially in the law faculties of the universities, are strongly interested in Civil Liberties, and they seem to insist, too, on fairly concrete implementation of any provincial government proposals in this area through the devising of appropriate institutionally-based arrangements. Hence all the talk about a provincial constitutional Bill of Rights, preferably one entrenched on a legal basis still to be determined, but not beyond the powers of imaginative provincial constitutional lawyers to devise; and hence all the talk about an Ombudsman, a provincial Conseil d’Etat and the like.

A provincial constitutional Bill of Rights would probably overlap with the area of federal (Dominion) constitutional power. Any question of a constitutional conflict thereby, however, would seem to be essentially academic in character. Now that the old-fashioned, essentially abstract, exclusive, “watertight compartments” view of Dominion-Provincial power has receded into history, it would be a matter of enquiring whether there is any direct conflict or incompatibility between a provincial constitutional Bill of Rights and a federal (Dominion) bill, such as the 1960 federal measure now on the statute books, or any other federal bill that might be adopted in the future. A provincial constitutional Bill of Rights might well go beyond the protection included in a federal bill; or it might fall short of the scope of the federal bill. But a positive conflict between a provincial bill and any federal bill would seem to be excluded, even assuming anyone had any constitutional interest or any sufficient jurisdictional *locus standi* to raise a valid constitutional challenge to the provincial bill.

Of even more interest to common lawyers in the English-speaking provinces will be the initiatives already taken by the Office for Revision of the Quebec Civil Code to draft a declaration of Civil Rights for inclusion as part of the planned text of the revised Quebec Civil Code—preferably the opening articles of the revised version. It has long been a

truism of common lawyers, after Dicey, that a good deal of what is conventionally considered as the area of Civil Liberties, is not, in conventional analytical jurisprudential terms, public or constitutional law, but rather ordinary, private law. This was confirmed dramatically in the Canadian Supreme Court majority decision in *Roncarelli v. Duplessis* in 1959, [(1959) 16 D.L.R. (2d) 689; discussed and critically analyzed in McWhinney, (1959) 37 Canadian Bar Review 503], where a great Civil Liberties decision raising important public and constitutional law implications for Canada, was arrived at by the Common Law majority, (with the two French-speaking, Civil Law judges on the Court dissenting), as it were interstitially to the Quebec Civil Code, through application of Article 1053 of the Code, the main provision of the Code as to Civil Delicts (Torts). The extra range of flexibility of the Civil Code's general provisions is amply reflected in the new declaration of Civil Rights, proposed to be included in the revised Civil Code of Quebec; for these provisions, in the full stream of continental European Civil Law jurisprudence and doctrines, seem to go well beyond the English-derived Common Law's private law-based protections to individual liberties in the conventional Common Law areas of Contracts, Torts, Real Property, and the like. Given imaginative and sympathetic interpretation and application by the courts, the new declaration on Civil Rights, if inserted in the revised Civil Code of Quebec, could be an important supplement to a provincial constitutional Bill of Rights—in no way conflicting with it, and in many ways effectively going beyond it. Since the current Quebec proposals in this area are part of a more comprehensive Quebec approach to provincial constitutional innovation and to law reform generally, any new Ontario steps or initiatives in the direction of institutionalized protection of Civil Liberties in the province should also be viewed, as far as possible, in the broader context of provincial constitutional and legal reform as a whole.

Recent Political Developments in Quebec Affecting Civil Liberties

During the first two-and-a-half years of the Liberal government no attempt was made to legislate within the field of Civil Liberties. However, considerable pressure was brought to bear upon the government both from the Negro and the Jewish communities. Of particular concern to these groups was the *Quebec Hotels Act* which, while requiring all restaurants and hotels to receive "travellers", had been interpreted in the *Christie* case¹ as permitting discrimination in taverns since they were not specifically covered in the Act. The proposal of the Lesage government early in 1963 to close this gap in the *Hotels Act* gave rise to considerable public controversy, not only over this Act but also concerning the whole field of Civil Liberties within provincial jurisdiction. *La Presse*, on February 1, 1963 reported the request of the Negro community to the Prime Minister to consider legislation in Ontario where the Civil Rights Com-

mission had been established in June of 1962. On February 5, *Le Devoir* reports an interview which Premier Lesage gave to two leading trade unionists, Jean Marchand and Louis Laberge. It is reported that while Premier Lesage declared himself against all forms of discrimination, and declared the willingness of his government to consider further legislation in the field, the Premier declared some reservations as to the value of the general law against discrimination. However, the new *Hotels Act*² was adopted by the Legislative Assembly on June 26, 1963. A year later, after considerable trade union pressure, the *Act Respecting Discrimination in Employment*³ was passed on July 30, 1964. The Lesage government did much to create a new atmosphere within the public administration and did much to create a public climate favourable to the respect of Civil Liberties. However, these two Acts constitute the only legal initiatives taken by that government.

In the last months before the election campaign in 1966, the Honourable Paul Gérin-Lajoie and the Honourable René Lévesque both made references to the necessity of further legislation in this field. During the campaign itself, apparently in response to demands of the Union Nationale for an Ombudsman and a Bill of Rights, Liberal campaign speeches promised both an Ombudsman and the Civil Rights Commission.⁴ Speaking on May 5, 1966, reported in *La Presse*,⁵ the Minister of Justice, Claude Wagner, stated that he personally preferred a special court to judge infractions to the Bill of Rights rather than an Ombudsman or a Commission. On May 18, 1966, *Le Devoir* reported that Premier Lesage, while addressing the American Society of Newspaper Editors, had stated that the new Bill of Rights which his party planned to implement upon re-election would include a guarantee of the freedom of the press.

Considerable emphasis in the Union Nationale Party's campaign in June 1966 was placed upon civil rights. It can be noted that on February 4, 1966, the Negro Citizenship Association complained about the failure of the Quebec Government to take action on Civil Rights legislation despite previous statements by the Honourable Paul Gérin-Lajoie and the Honourable René Lévesque.⁶ On February 8, 1966, *La Presse* reported that the Montreal Council of Women had complained that no reply had been received from the government to their brief demanding a Human Rights Code, which they had submitted to the government in late 1963. Union Nationale leaders made Civil Rights legislation an important aspect of their party's program. The Honourable Daniel Johnson in a widely reported speech on March 20, 1966, to the Negro Citizenship Association in Montreal, declared that his government would take all measures necessary to create the institutions needed to protect human and minority rights. In this respect he promised that his party, if elected, would establish the office of Ombudsman, insert in the *Ministry of Education Act* (Bill 60) a guarantee of education to all, and would pass a charter of human rights preventing discrimination in employment, housing, and education, and guaranteeing free access to all public

places.⁷ In the party program the Union Nationale promised to pass a Quebec Bill of Rights and to create the office of Ombudsman:

Justice et Libertés Civiles

Les Solutions

Pour revaloriser l'administration de la justice au Québec, l'Union nationale propose:

Une Charte Québécoise Des Droits De L'Homme

L'Union nationale fera insérer dans la constitution du Québec une charte proclamant et garantissant les droits fondamentaux et les libertés essentielles de la personne humaine.

Quels que soient sa race, sa couleur, sa religion, toute personne jouira de la liberté de religion, de parole, d'association et de presse, aura droit à la vie, à la liberté, à la sécurité, à la possession et à la jouissance de ses biens, à la protection de la loi et à l'égalité devant la loi.

Institution D'un Ombudsman Ou Protecteur Du Peuple

Toute personne qui se croira lésée par des actes du pouvoir ou de l'appareil administratif pourra s'adresser au protecteur public afin de faire établir et reconnaître ses droits.

Again, the Union Nationale party also promised to pass the *Charter of the Rights of Children* based on the U.N. *Declaration on the Rights of Children* (1959).

In one of his first major addresses after his party's electoral victory of June 1966, Premier Daniel Johnson, in his speech to the American Bar Association, on August 8, 1966, dealt at length with the problem of Civil Liberties. He declared that his government would soon proceed with the passing of a Quebec Bill of Rights as promised. Both *Le Devoir*⁸ and *La Tribune* of Sherbrooke⁹ reported that this Bill of Rights would be included in a new Constitution of Quebec. Three other papers, however,¹⁰ reported that the Bill of Rights would be included in the Civil Code, while the two English papers, the *Montreal Star* and the *Montreal Gazette*, reported the Premier's promise of the Bill of Rights, but did not indicate whether it would be a part of the new provincial Constitution or of the revised Quebec Civil Code. The Premier also announced that the province would have an Ombudsman at an early date. It should be noted that Premier Johnson repeated this intention in a speech on September 26.¹¹

The interest of the two major parties in the provincial election campaign of 1966 in the idea of enacting a Bill of Rights is something rather new in the history of Quebec politics.

A most interesting example of the growing public concern for Civil Liberties is to be found in the brief recently presented to the Committee of the Quebec Legislature studying the Constitution, by the combined labour movements of the province (Confederation of National Trade Unions, Quebec Federation of Labour, Catholic Farmers' Union). One of the seven major demands of the brief was for a "Declaration of liberties and fundamental rights".

One of the most concrete steps towards broader legislative protection of Civil Liberties, however, is represented by the draft articles presented

to the Office of the Revision of the Civil Code on September 29, 1966 by its Committee on Civil Rights.¹² It is to be expected that these articles may form part of the text of the new revised Quebec Civil Code, still in process of drafting.

Doctrinal Legal Writing in Quebec Concerning Civil Liberties

Professor Frank Scott is well known for his lifetime interest in Civil Liberties. Yet only one of his articles, "The Bill of Rights and Quebec Law"¹³ has been concerned with the specific problems of Civil Liberties existing under the Code.

Interest in Civil Rights was clearly spurred by the passage of the *Canadian Bill of Rights*, and several articles appeared in Quebec legal journals discussing this Act. Civil Rights are touched upon in articles concerning the Quebec schools system, one of the best of these being by Professor René Hurtubise, "La confessionnalité de notre système scolaire et les garanties constitutionnelles".¹⁴ In 1955 a student of the University of Montreal, André Biron, published an article, "La discrimination raciale dans le commerce",¹⁵ in which the author discussed and condemned the *Christie*, and *Loew's Theatre*, cases. In 1957 Professor Roger Comptois published an article entitled, "De la prohibition d'aliéner dans les actes onéreux: La Clause Raciale".¹⁶ In this article Professor Comptois declared with apparent approval that clauses in deeds of sale prohibiting subsequent transfer of property to persons of specified races were fully justified under the Quebec doctrine of freedom of contract; and he also suggested that any statutory enactment prohibiting racial discrimination should be restrictively interpreted since in derogation of the Common Law doctrines. In 1963, André Cossette published an article entitled, "Les notions d'égalité et dans la discrimination de droit successoral de la province de Québec"¹⁷ which dealt, tangentially, with the problems of discrimination under the Quebec law of successions. In 1957 two students at the University of Montreal published an article entitled, "La discrimination raciale et la famille nombreuse"¹⁸ which goes no further than the article by Biron. A more complete discussion of Civil Liberties and the loss of successions is to be found in the thesis of Professor André Morel, *Les limites de la liberté testamentaire dans le droit civil de la province de Québec*.¹⁹ On the other hand, little direct guidance as to the extent of the protection of Civil Liberties under the private law of Quebec can be derived from the main doctrinal writers, such as Mignault, *Droit Civil Canadien*, the Trudel series, or Professor Louis Baudoin's well-known work *Le droit civil de la province de Québec*.

The article by Professor Frank Scott (already referred to) warrants detailed consideration. Professor Scott bases his argument on the very broad right to damages, both moral and material, which exists under the Civil Law. He states:

The Civil Law has evolved the general principle of liability for wrongs, applicable to all situations that present themselves. It is a law of delict and not of delicts; new sets of facts may arise in society to which the rule has never been applied before, yet which it is adequate to cover.²⁰

It is Professor Scott's thesis that article 1053 of the Civil Code²¹ "underpins the basic civil rights".²² Thus Professor Scott considers that judicial discretion exercised to accept the infringement of basic Civil Liberties as an actionable wrong would provide more than an adequate protection for these liberties. The strength and originality of Professor Scott's thesis has been to show how existing rules of the Civil Law could be used to offer a broad protection to all basic Civil Liberties. Professor Scott has thus defined and used the technique in the *Roncarelli* case.²³ The weakness of Professor Scott's thesis, however, would seem to be that it leaves protection of Civil Rights to the judges. Professor Scott also relies on the fact that the judges in the Province of Quebec have wide latitude to rule on the matter on the grounds of public order and good morals under article 13 of the Code, if they care to exercise the power.²⁴ He also points out that the doctrine of "abuse of rights" is recognized to a far greater extent in the Civil Law than in the Common Law.

Quebec Provincial Legislation Respecting Civil Liberties

The principles of private law, to be found in the Civil Code of the Province of Quebec, will be discussed in succeeding chapters. However, two articles of the Civil Code, in particular, may be cited at this point:

Article 13. No one can, by private agreement, validly contravene the laws of public order and good morals.

Article 1053. Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

In addition, there are several special statutes enacted by the Quebec legislature.

The *Hotels Act*²⁵ regulates hotels, restaurants, lodging houses, camping grounds, etc. Article 8 of this Act states:

No owner or keeper of a hotel, restaurant or camping ground shall directly or through his agent or a third party:

(a) refuse to provide any person or class of persons with lodging, food, or other services offered to the public in the establishment; or

(b) exercise any discrimination to the detriment of any person, or class of persons as regards lodging, food or any other service offered to the public in the establishment, because of race, belief, colour, nationality, ethnic origin, or place of birth of such person, or class of persons.

This Act does little more than reproduce the old *Licensing Act*²⁶ which was interpreted as not including taverns; it is still not certain whether taverns are covered by the new Act.

The *Act respecting discrimination in employment*²⁷ is a comprehensive measure, introduced by the Lesage government and relating to Civil Liberties. Section 1 (a), defines discrimination as:

Discrimination—any distinction, exclusion or preference paid on the basis of race, colour, sex, religion, national extraction, or social origin, which has

the effect of nullifying or impairing the equality of opportunity or treatment in employment or occupation; but any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

The Act does not apply to anyone who has fewer than five employees, and does not apply to non-profit associations or corporations operating exclusively for religious, philanthropic and educational purposes, etc. More surprising, the Act does not cover any person "employed as manager, superintendent, foreman or representative of the employer in his relations with his employees, or directors or officers of a corporation." Section 2 of the Act prohibits any discrimination on the part of an employer in the hiring or firing of his employees. Section 3 of the Act requires that no association of employees or employers should resort to discrimination in admitting or expelling members. Prosecutions under this Act may be taken either by the provincial Crown, or by private persons after authorization by the Quebec Labour Relations Board. A weakness of this Act would seem to be that it applies only to employees at the lower levels and not to foremen or staff members: again, the fine of \$25 to \$100 does not seem calculated to constitute a serious prohibition.

Two other Acts deserve special mention. The *Freedom of Worship Act*²⁸, section 2 states:

It does not constitute free exercise or enjoyment of religious profession and worship

(a) to distribute, in public places or from door to door, books, magazines, tracts, pamphlets, papers, documents, photographs or other publications containing abusive or insulting attacks against the practice of religious profession or other religious beliefs of any portion of the population of the province, or remarks of an abusive or insulting nature respecting the members or appearance of a religious profession; or

(b) to make, in speeches or lectures delivered in public places or transmitted to the public by means of loudspeakers or other apparatus, abusive or insulting attacks against the practice of a religious profession or religious beliefs of any portion of the population of the province, or remarks of an abusive or insulting nature respecting the members or appearance of a religious profession.

This Act, although not colourable on its face, was seemingly passed in order to prevent Jehovah's Witnesses from disseminating their religious tracts after the *Saumur* decision had upheld their right to do so. It was reproduced in the Revised Statutes of 1964 without alteration.

The *Press Act*²⁹ states in Article 2:

Every person who deems himself injured by an article published in a newspaper and who wishes to claim damages must institute his action within three months following the publication of such article, or within three months after his having had knowledge of such publication, provided, in the latter case, that the action be instituted within one year from the publication of the article complained of.

Article 8 states:

Whenever the party who deems himself injured has both obtained a retraction and exercised the right to reply, no prosecution may issue if the newspaper publishes such retraction and reply without further comment.

The exemption of the newspaper from any possible damage suit is thus made contingent upon its publishing both a reply by the injured party and its own retraction without further comment on what may be an

important issue. The constitutionality of this Act has never been questioned.

Civil Rights Under The Civil Code of The Province of Quebec

Public order and good morals

Article 13 of the Civil Code states:

No one can by private agreement, validly contravene the laws of public order and good morals.

Quebec judges have been traditionally cautious, but this article could nevertheless serve as a positive law base for declaring infringements of individual civil liberties to be against public order and good morals. Such a position has been justified by the Quebec jurist, Antonio Perrault:

On peut conclure que le législateur québécois prit partie dans l'élaboration de notre droit privé et qu'il affirma sa croyance à la transcendance du Droit, à la notion d'une loi positive conforme à l'ordre divin à l'existence d'une loi morale et juridique supérieure à l'individu et même à la collectivité. Le Code Civil québécois ne s'appuie pas exclusivement sur une base individualiste, mais aussi sur cette idée que le droit, science sociale, a pour fin unique l'équilibre entre les citoyens, la paix au sein de la société. Le législateur ne pouvant prévoir d'avance toutes les circonstances où devront être protégés les intérêts fondamentaux de la nation, accorde aux juges l'autorité de s'appuyer, pour suppléer aux lacunes de la loi, arrêter l'égoïsme trop souvent injuste des individus, sur l'ordre public et les principes indispensables à la morale chrétienne.³⁰

Abuse of rights

The doctrine of abuse of rights, first elaborated by the French jurist, Josserand, at the beginning of the present century, has gained some following in France, but its existence in the Province of Quebec is hotly disputed. According to this doctrine the exercise of a right may be sanctioned if the Court deems it to have been moved solely by malice or a desire to harm others. There are a few rare judicial *dicta* declaring the doctrine of the abuse of rights to exist in Quebec law. However, it has never been invoked as the sole justification of a decision and it would seem true to say that, in Quebec, the widely used term "abuse of rights" simply denotes an act which in itself causes unjust suffering to others, constituting in effect a nuisance in common law terms.

In the case of *Drysdale v. Dugas*³¹ it was stated that article 1053 of the Civil Code:

includes all abuses of proprietary rights, even the most absolute, for such rights must, according to the general principles of all systems of law, be subject to certain restrictions subordinating the exercise of acts of ownership to the rights of neighbouring proprietors; *sic utere tuo ut alienum non laedas* is as much a rule of the French law of the Province of Quebec as to the common law of England.³²

The general principle of liability in Delict:
Article 1053 C.C.

Article 1053 C.C. reads as follows:

Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

This Article provides a general recourse in damages for any harm caused by a person, either by his wilful act, or by his neglect. The ambit of this Article is by no means restricted to material or pecuniary harm, nor is it restricted to certain predefined and generally recognized wrongs. The action in damages granted under Article 1053 is of the most general nature. In Civil Law terms, it extends not only to harm done to a patrimony, but also to any infringement of extra-patrimonial rights. Thus, it is equally possible to demand "moral damages" for any affront to one's personal dignity, either arising from an affront to one's reputation or from illegal detention of one's person. It can be seen that this principle extends with equal felicity to all attainments to generally recognized Civil Liberties. The strongest possible judicial *dicta* exist to this effect. In the case of *Duhaime v. Talbot*³³ the Quebec Court of Appeal made it clear that while "punitive damages" do not exist under the Civil Law of Quebec moral damages most certainly do. The Honourable Mr. Justice Rivard stated:

En droit civil, le préjudice causé par un délit ou un quasi-délit ne peut donner lieu à une condamnation devant servir uniquement de punition ou d'exemple; c'est là plutôt le domaine du droit pénal. Sous l'empire de l'article 1053 du Code civil, les dommages-intérêts qui peuvent être accordés à la victime d'un délit s'étendent de la compensation pour le tort subi; c'est la réparation pécuniaire d'un préjudice. Ce préjudice peut être matériel; les conséquences pécuniaires en sont aisément appréciées et doivent faire l'objet d'une preuve spécifique. Il peut aussi être moral: atteinte à l'honneur, à la réputation, chagrins, inquiétudes, etc. . . .³⁴

The use of this technique under the Civil Law has been particularly evident in cases of defamation of character and unjustified imprisonment. In the case of *Chaloult v. Chronicle Telegraph Publishing Co. Ltd.*³⁵ damages were awarded to René Chaloult, an anti-conscription agitator, against the Chronicle Telegraph Publishing Company which had published a bitter attack upon his character and political activities. The Court held that the comments of the newspaper went beyond all bounds of "comment" and constituted "un fait qui porte atteinte à l'honneur ou à la considération de la personne ou du corps"³⁶ and the Court held that in such a question the plaintiff did not have to prove specific pecuniary damages. The right to moral damages for defamation may be invoked by other members of a family who feel themselves equally defamed.³⁷

An example of damages being awarded for humiliation and false imprisonment is that of *D. v. City of Montreal*.³⁸ In this case a young and respectable girl was arrested by the police on suspicion of prostitution, and despite protests, was submitted to medical tests in the police station and kept there all night without permission to contact her parents. She was awarded damages not only for loss of earnings and medical expenses, but "for her physical, mental and moral pain and suffering and for great injury to her reputation, character and humiliation."³⁹

Again, in the case of *Londell v. Macy*,⁴⁰ two young girls working as

Jehovah's Witnesses missionaries in Joliette were awarded damages against the virtual vigilante group of good citizens who kidnapped them on the street and sent them, prisoners, by taxi to Montreal to be rid of them. In awarding damages the Court referred to "le droit de chaque individu à la liberté de la personne"⁴¹ which the defendants had flagrantly violated.⁴²

A leading case demonstrating the efficacy of recourse to Article 1053 C.C. as a remedy for abuse of Civil Liberties, is the Supreme Court decision in *Lamb v. Benoit et al.*⁴³ In this case, dealing with the false imprisonment of Lamb, the police officers sought to argue that they had acted according to orders. Rejecting this argument the Supreme Court held that they must be deemed to have acted without good faith, and it followed necessarily that they had committed a delict actionable under Article 1053 of the Civil Code.⁴⁴

The most important statement of the applicability of Article 1053 C.C. to any infringement of Civil Rights is to be found in the Supreme Court decision of *Chaput v. Romain et al.*⁴⁵ Here, the Court ruled that the policemen who had illegally entered a Jehovah's Witnesses meeting and seized tracts, books and pamphlets which they did not return, could not be deemed to have acted in good faith and were therefore liable to damages under Article 1053 C.C. To this effect Justice Taschereau gave the following important definition of the extent of these damages:

En vertu de 1053 C.C. l'obligation de réparer découle de deux éléments essentiels: un fait dommageable subi par la victime, et la faute de l'auteur du délit ou du quasi-délit. Même si aucun dommage pécuniaire n'est prouvé, il existe quand même, non pas un droit à des dommages punitifs ou exemplaires, que la loi de Québec ne connaît pas, mais certainement un droit à des dommages moraux. Le loi civile ne punit jamais l'auteur d'un délit ou d'un quasi-délit; elle accorde une compensation à la victime pour le tort qui lui a été causé. La punition est exclusivement du ressort des tribunaux correctionnels. Le dommage moral, comme tout dommages-intérêts accordés par un tribunal, a exclusivement un caractère compensatoire.

Il comprend certainement le préjudice souffert dans la présente cause. Il s'entend en effet de toute atteinte aux droits extrapatrimoniaux, comme le droit à la liberté, à l'honneur, au nom, à la liberté de conscience ou de parole. Les tribunaux ne peuvent refuser de l'accorder, comme par exemple, si les sentiments religieux ou patriotiques ont été blessés.^{46a}

The right of privacy

The leading case in this field is that of *Robbins v. The Canadian Broadcasting Corporation*.⁴⁶ In this case, producers of the program *Tabloid* read publicly an angry letter which they had received from a prominent physician, and invited the public to call him and "cheer him up". The Court ruled in favour of Dr. Robbins awarding him \$3000 damages on the ground that:

the defendant and its employees knew or ought to have known, that the said television broadcast and request would have been a damaging invasion of the plaintiff's privacy, and would be seen and heard by many thousands of people in Eastern Canada and the United States, and that a large number of them would respond to the said request and subject the plaintiff to abuse and insults and prejudice and humiliation, and would cause loss and damage to the plaintiff.⁴⁷

The second reported case in this field is that of *Cooperburg v. Buckman*,⁴⁸ in which the plaintiff claimed damages on the ground that the defendant had badgered and annoyed him by telephone calls, at his place of employment and late at night at his residence, in order to collect an outstanding debt of \$58. The Court ruled in his favour, stating that while the Civil Law of Quebec does not recognize punitive damages against the defendant in a civil case:

Moral damages are recognized with the violation of a right such as the peaceful enjoyment of one's home without unjust disturbance.⁴⁹

Trespass

The English doctrine of *trespass* does not prevail under the Civil Law of Quebec, and, according to the Appeal Court decision of *Cadorette v. Paris*,⁵⁰ damages, even for constant incursion on to one's property, will only be awarded if the plaintiff can prove damages therefrom. The majority of the judges of the Court of Appeal would have been willing, however, to award moral damages had they been sought by the plaintiff. It is likely that the following statement of the law by two dissenting judges would find favour with many members of the bench.

La violation voulue de la propriété n'est pas seulement une provocation injuste à l'encontre du propriétaire, mais elle est, à mon sens, une injure donnant droit à des recours en justice en civile, une réclamation en dommages-intérêts, même si cette dernière n'a pour fin principale que de faire reconnaître le principe du droit inviolable à la propriété.⁵¹

Access to public places

The cases under this heading are undoubtedly the most important and the most frequently cited, of all the decisions relating to Civil Liberties under the law of Quebec. They turn on what is probably the most complete and dogmatic exposition of the doctrine of freedom of contract, setting the tone for the whole Civil Law of Quebec with respect to individual Civil Liberties. In effect they accorded primacy to freedom of contract over countervailing libertarian interests.

The first case in this area is surprisingly liberal, although it was argued in terms of freedom of contract, and was thus not necessarily overruled by the subsequent cases. In the case of *Sparrow v. Johnson*⁵², the Court of Queen's Bench ruled that once the theatre had sold tickets to a customer accompanied by a coloured woman, it could not subsequently require the couple to sit in other seats than those for which they had bought tickets. But if the result of this decision was liberal, the Court at no point condemned the racial discrimination in requiring negroes to sit in certain parts of the audience only, and the *ratio* of this case turns solely upon the fact that the theatre did not have the right to change the terms of the contract and require the couple to sit in other seats after having sold the tickets.

In the case of *Loew's Montreal Theatre Limited v. Reynolds*,⁵³ the Court of Appeal ruled that a coloured man had no right under the law

to protest a rule of the theatre requiring negroes to be seated in a certain part of the hall only. In this case, unlike that of *Sparrow*, Reynolds had purchased a general ticket of admission, and not a ticket for a particular seat. In reversing the decision of the Superior Court in favour of plaintiff, the Court of Queen's Bench ruled:

While it may be unlawful to exclude persons of colour from the equal enjoyment of all rights and privileges in all places of public amusements, the management has the right to assign particular seats for different races and classes of men and women as it sees fit, but unless there is a regulation of a theatre assigning particular seats for white people and for coloured people, the management would have no right to reject coloured people who have purchased tickets of general admission.⁵⁴

Despite the liberalism of this final proviso the Court of Appeal held that freedom of contract must have precedence over any condemnation of racial discrimination.

The case of *Christie v. the York Corporation*⁵⁵ was, until 1963, the leading case in the whole field of Civil Liberties under the private law of Quebec. Although the particular act of discrimination in the *Christie* case has now been prohibited by statute, it is still too early to say that the whole case has lost its significance. Christie, a negro who had frequently been there before was refused service, first by a waiter, and then by the manager of the tavern and ejected by the police at their request. The Superior Court maintained his action in damages, but the Court of Queen's Bench and the Supreme Court reversed this judgment. The basis for this decision was the primacy of freedom of contract. The Court of Queen's Bench in the *Christie* case ruled as follows:

Considering that as a general rule, in the absence of any specific law, a merchant or trader is free to carry on his business in the manner that he conceives to be best for that business.⁵⁶

Two of the five judges of the Court of Appeal dissented, on the ground that holders of public licences must be deemed to have public duties; yet neither of these judges was able to find a cause for damages under Article 1053. The majority of the Court of Appeal refused to hold that an act of racial discrimination could constitute grounds for an action in damages, and in particular, they reasoned that the *Hotels Act*, which required restaurateurs and hotel keepers to serve all travellers, must be interpreted restrictively as a derogation to the general principle of freedom of contract.

The decision of the Supreme Court, to which only one judge (not a Quebec judge) dissented was even more explicit. Mr. Justice Rinfret held that:

We ought to start from the proposition that the general principle of the law of Quebec is that of complete freedom of commerce. Any merchant is free to deal as he may choose with any individual member of the public. It is not a question of motives or reasons for deciding to deal or not to deal; he is free to do either. The only restriction to this general principle would be the existence of the specific law, or, in the carrying out of the principle the adoption of the rule contrary to good morals or public order.⁵⁷

Mr. Justice Rinfret further held that:

It cannot be argued that the rule adopted by the respondent in the conduct of its establishment was contrary to good morals or public order.⁵⁸

Thus, in the *Christie* case, we have strong authority for the proposition

that an act of racial discrimination is not a breach of contract, is not a delict under Article 1053, and is not against public order and good morals.

Group defamation

The general rule under the Civil Law of Quebec is that to bring an action in defamation under Article 1053, the plaintiff must be able to prove that the statements of which he complains designate him with sufficient clarity. This principle would seem to exclude the possibility of any group of persons taking an action in defamation. This is the case in Quebec. However, it would seem that in some cases a number of persons who may claim to have been defamed together may take a common action. Thus, it is possible for any member of a family which has been defamed as a group to take an action in damages.⁵⁹ Advancing further, while it has been held that members of an association cannot join together individually to sue in the common name of the association⁶⁰ it was held in the case of *Ibbotson v. l'Autorité*⁶¹ that the members of the Board of Governors of the College of Surgeon-Dentists could take an action against a newspaper which had published a libellous and defamatory article attainting their professional honour.

In the case of *Germain v. Ryan*⁶² it was held that a vicious and general attack by an Irishman upon all French Canadians was too general to give any one of the unfortunate victims a cause of personal prejudice. However, in the case of *Ortenberg v. Plamondon*⁶³ the libel of 75 Jewish families was held to be actionable. The Court of Appeal stated:

Ce n'est pas le cas d'une injure adressée à une collectivité aussi nombreuse pour qu'elle se perde dans le nombre.⁶⁴

Defamation and freedom of the press

Under the private law of Quebec, the Press enjoys no special privilege and is responsible in cases of injurious statements as is any person. The only articles which are absolutely privileged are accurate reports of statements in Parliament, and the provincial Legislatures, and fair and honest reportings of court proceedings. The ordinary rules concerning libel apply to newspaper statements; thus there is liability if the offending party cannot prove that the publication was made in the public interest, concerning a matter of public importance and was true or was reasonably and with probable basis believed to be true. It was held in the case of *L'Impression Populaire v. Taschereau*⁶⁵ that liability was not avoided because the libel was printed in good faith and without malice. However, good faith may be pleaded in mitigation of the damages, as may the truth of the statements published and the notoriety of the facts printed.

Most cases of defamation in newspapers or periodicals are now dealt with under the *Quebec Press Act*⁶⁶ which requires every person who deems himself injured by an article published in a newspaper, and who

wishes to claim damages, to institute his action within three months following publication and give three days' notice at the office of the newspaper so as to allow the newspaper to rectify or retract the offending article. The newspaper must comply with the provisions of the statute to the letter in order to benefit from the provisions of the statute.⁶⁷

Discrimination in housing

There does not appear to be any Quebec jurisprudence (case law) on the subject of racial discrimination in housing, prior to 1965. In the light of this absence of case law, and in the light of the doctrines of *Christie v. the York Corporation*, decided by the Supreme Court of Canada in 1939, (*supra*), it would seem that until recently the doctrine of freedom of contract and freedom of commerce prevailed in this field. However, in October 1965 a most unusual decision was rendered by Mr. Justice Nadeau of the Superior Court in the case of *Gooding v. Edlow Investment Corporation*.⁶⁸ The plaintiff, a coloured woman, sought through her agent to rent an apartment on Girouard Avenue. First her agent, and then she, accompanied by her agent, spoke with the superintendent of the apartment block. The latter agreed to rent an apartment and phoned the office of the rental company who also agreed to rent and requested the plaintiff to come over to their office to sign the lease. Under Quebec law such an agreement to sign a lease is tantamount to a lease—a valid “*pré-contrat*”. On arrival at the defendant company's offices the plaintiff spoke with the company's agent Beck for a moment. Beck then left the room only to return some minutes later to say that the apartment was not available and allegedly giving as a reason that he could not rent to a negress. The evidence as to this statement was contradicted by Beck, but Mr. Justice Nadeau preferred the plaintiff's version of the statement. Mr. Justice Nadeau ruled that a valid lease had been concluded between the parties had been unreasonably breached by the defendant company. The company was therefore condemned to pay contractual damages representing (a) the deposit on the verbal lease which the plaintiff had made, (b) the sums of money which the plaintiff had had to spend reconditioning the inferior apartment which she ultimately rented, (c) the commission of the plaintiff's agent in his subsequent search for an apartment and (d) the damages represented by having to rent an apartment in an inferior location to that of the one which she might have had from the Edlow Corporation.

The plaintiff claimed that, upon the refusal of the defendant corporation to rent the apartment to her for reasons of racial discrimination, she suffered such severe moral humiliation that she not only fainted upon the spot but also was ill and upset for several weeks after, and was forced to miss several days of work. Mr. Justice Nadeau completely concurred in the justice of these claims and stated specifically that damages must also be awarded to the plaintiff under Article 1053 of the Civil Code as well as under contract. He concluded his decision in the following terms:

VU les articles 13 et 1053 c. civ.;

CONSIDERANT qu'en plus du fait pour la défenderesse d'avoir résilié le contrat de location pour un motif aussi manifestement illégal, elle a par l'entremise de son gérant, agissant dans l'exécution de ses fonctions, insulté et injurié la demanderesse, en exprimant ce motif de résiliation publiquement devant elle et M. George Papadakis;

CONSIDERANT que toute discrimination raciale est illégale parce que contraire à l'ordre public et aux bonnes moeurs;

CONSIDERANT que le geste discriminatoire posé par la défenderesse constitue une violation des règles couramment admises de la morale, applicables à la vie en société; qu'il est aussi de la catégorie des actes attentatoires à l'ordre public, étant de nature à troubler la paix dans la société;

CONSIDERANT qu'un tel acte de discrimination posé dans les circonstances exposées plus haut constitue une faute civile délictuelle, dont la défenderesse doit répondre;

CONSIDERANT que pour cet acte de discrimination dont elle a été victime, la demanderesse, humiliée et atteinte dans sa sensibilité, a droit d'obtenir, en réparation de ce préjudice moral, une somme d'argent que le Tribunal fixe à \$300.00;

CONSIDERANT qu'au double titre de l'inexécution par la défenderesse de son contrat et de la faute dont elle s'est rendue coupable, il y a lieu d'accorder à la demanderesse la somme totale de \$525.45;

PAR CES MOTIFS, LE TRIBUNAL:

ACCUEILLE en partie l'action de la demanderesse;

DECLARE résilié et annulé le bail intervenu entre la demanderesse et la défenderesse, le ou vers le 26 avril 1960, pour l'appartement No. 8 au 2290 de l'avenue Girouard, à Montréal;

CONDAMNE la défenderesse à payer à la demanderesse la somme de \$525.45 avec intérêts à compter de la signification de l'action et les dépens.⁷⁶⁰

This case is clearly in flagrant contradiction with the doctrines of contract proclaimed in the *Christie* case by the Supreme Court. It provides a remarkable example of the efficacy of the remedy which exists under the Civil Law to protect persons against infringements in their basic civil liberties.

Racial discrimination in trade unions

There seems to be only one reported case in this field,⁷⁰ *John Murdock Limitée v. La Commission des relations ouvrières de Québec et La Fraternité unie des charpentiers-menuisiers d'Amérique*.⁷¹ In this case, the Woodworkers Union organized what they purported to be a majority of the employees of the John Murdock Company, but which was in fact only a majority of the non-Indian workers, the latter workers not having been considered at all. The company sought a writ of *certiorari* attacking the validity of the union certification. The Superior Court granted the writ, rejecting the Union argument in defence that Indians were wards of the state and protected by special laws and thus subject to the ordinary labour legislation of the province. The Honourable Mr. Justice Boulanger stated further:

Cette tentative de ségrégation raciale ne peut être appuyée sur aucun texte de loi. C'est une atteinte à la liberté de travail et aux droits de tous salariés de faire partie ou non d'une association et de bénéficier de législation ouvrière.⁷²

The Judge stated that it was not open to the Labour Relations Board to refuse to consider Indians any more than it would be open to them to exclude from account the majority of workers in a given group of Protestants, Czechoslovaks or adherents to the doctrines of social credit.⁷³

Discrimination in employment

Two important prosecutions have been brought under the 1964 *Employment Discrimination Act*.⁷⁴ Both cases are still pending before the courts. The first case, the *Queen v. Hilton of Canada (Balyss)*,⁷⁵ was that of a negro nurse who claimed that she was refused employment at the Queen Elizabeth Hotel because of her race. Before judgment could be rendered by the Court of Sessions in 1965, the Hotel took a writ of prohibition arguing that the Quebec statute was *ultra vires* the province. The decision will be rendered by the Superior Court some time in 1967.⁷⁶ The second case, the *Queen v. Lafferty and Harwood Ltd.*,⁷⁷ is a claim by two Jews that they have been refused employment in the office of a prominent investment brokerage firm because of their race. Proceedings before the Court of Sessions of the Peace have been stayed until a decision by the Superior Court on the constitutional issue can be rendered.⁷⁸ The decision of the Superior Court on the constitutional issue in the *Balyss* case⁷⁹ may have far-reaching implications for the definition of the limits of provincial powers in the areas of civil rights.

Discriminatory clauses in contracts

There is very little jurisprudence in this area—in part, perhaps, because such cases have not been reported, but more likely due to predominance of the doctrine of freedom of contract. In the opinion of Professor Comptois,⁸⁰ discriminatory clauses in contracts, such as the clause in the deed of sale prohibiting further sale to “persons of Jewish race” must be upheld under the existing private law of Quebec: the only hope which he holds out is that Quebec courts, (as in the Ontario decision, *Re Noble and Wolfe*⁸¹) might rule that such a clause was too vague to be applied.

There is an unreported decision concerning discriminatory clauses in contracts, given by Mr. Justice Nadeau—*John Whitfield v. Canadian Marconi Company*.⁸² In this case the plaintiff Whitfield was an electrician working on a government contract in northern Quebec. One of the clauses of his contract with the Canadian Marconi Company read as follows:

Indian and Eskimo villages are considered out of bounds and personnel are prohibited from fraternization or association with the native population except in special circumstances. Infringement of these orders is cause for a discharge.

Whitfield became enamoured of a young Eskimo nurse and, in order to visit her, naturally violated the terms of his contract. On being questioned by his superiors Whitfield argued that the young lady in question could not be regarded as a primitive Eskimo in need of protection against

white men, since she had lived for several years in Montreal, studying to be a nurse, and had worked for two years with Air Canada as an airline hostess. The company and the Department of Northern Affairs, however, considered that the principle of protection of Eskimos from contact with the construction workers in the Dew Line sites was sufficiently important to necessitate its application even in the most doubtful case.

Mr. Justice Nadeau, in his decision in the case, ruled that Whitfield's discharge was both in conformity with his contract and that the contract was in no way a violation of public order and good morals, since the purpose of this contract was to protect Eskimos, not to discriminate against them. The decision has been appealed to the Court of Queen's Bench.⁸³ The principle announced by Mr. Justice Nadeau still appears clear, and he does not appear to have gone back upon his earlier ruling in the *Gooding v. Edlow* case. What Mr. Justice Nadeau found was that this clause was not discriminatory and hence not against public order and good morals. Had he concluded the clause to be discriminatory it may be presumed that he would have gone on to rule it to be invalid.⁸⁴

Testamentary freedom

There have been a number of cases in the province of Quebec in which clauses in wills were attacked as invalid since they contravened freedom of religion. Freedom of religion is recognized as much under the private law of Quebec as under public law; thus in the case of *Chaput v. Romain*⁸⁵ Mr. Justice Taschereau stated:

Il n'existe pas de religion d'état; toute atteinte à cette liberté constitue un préjudice moral pour lequel les tribunaux accordent réparation.⁸⁶

The great Quebec doctrinal writer, Mignault, states in his *Traité de Droit Civil Canadien*:

Toute atteinte à la liberté de religion est contre l'ordre public et les bonnes mœurs.⁸⁷

The leading case in this area is that of *Renaud v. Lamothe*.⁸⁸ In this case a father left money to all his children with a substitution in favour of their children, on the condition that only his grandchildren who had been brought up and educated according to the rites of the Catholic Church should be eligible under the substitution. The Superior Court declared this clause to be an attaint to freedom of religion and therefore against public order and good morals. The Court of Appeal reversed this decision in the following terms:

I only add a word to draw a distinction which I make in the application of this will to marriages contracted before or after the death of the testator. In the latter case the provisions of the will would have been open to objections made by the learned judge who rendered the judgment appealed from. In that case the testator's unmarried children would have had a pecuniary interest in conforming to the cause of the will which disinherited a child who contracted the marriage with anybody but a Catholic. This would have been a restraint of personal freedom of choice in marriage, and, therefore contrary to public morals, and prohibition of the will *quoad* such child or the issue of such a marriage would, in my opinion, have been inoperative for the reason given in the judgment.⁸⁹

Thus the Court of Queen's Bench ruled that the clause was valid since

at the time of making the will and at the time of the testator's death his children were married and his grandchildren were all alive. Had this not been the case, however, such a clause would well have been against public order and good morals. The Supreme Court confirmed this decision but since its ruling is based solely upon construction of the English rules in this matter it is of little interest or authority. In the case of *Thornton v. Parker*⁹⁰ the heirs attacked the clause which declared (a) that all the children of the *de cuius* who are members of the Baptist Church would be excluded from the succession and (b) all those who abjured the beliefs of this sect would become eligible to participate in the succession. The Court declared that clause (b) was clearly an attain to freedom of religion, and hence illegal, but unfortunately, the Court considered that it was impossible to divide the two clauses, and rather than declare the will to be of no effect whatsoever, it held the first clause valid under the rule laid down in *Renaud v. Lamothe*.

In an earlier case, *Kimpton v. La Compagnie de Chemin de Fer du Pacifique Canadien*,⁹¹ a substitution in favour of all grandchildren who might become Protestants was declared to be null and against public order and good morals.

Professor André Morel in his study, *Les limites de la liberté testamentaire*,⁹² declares:

Le legs qui est subordonné à la condition de se faire prêtre ou, au contraire, de renoncer à cet état enfreint donc l'ordre public à un double titre.⁹³

Thus, in the area of testamentary freedom, it would seem that the Courts are willing to exercise their power of declaring a clause null as violating public order and good morals, if they deem it to be an infringement of freedom of religion. Professor Morel writes in his study⁹⁴ that the one area of testamentary freedom in which the Courts seem unwilling to interfere on any grounds, concerns those clauses in a will affecting a wife's rights under a succession should she remarry, or should her circumstances or her way of life alter considerably.

Freedom of religion under the Quebec school system

In the Province of Quebec the *B.N.A. Act* institutes a system under which Protestants cannot be Catholics but, paradoxically, all non-Catholics are *de facto* considered as Protestants.⁹⁵ However, in rural districts, children of all religions have a right to attend the local school, if the school of their Protestant or Catholic denomination does not exist separately.

Under the Quebec education system, there is a special rule which obliges all persons who wish to teach either in the Protestant or in the Catholic system to obtain from their priest or minister a certificate declaring them to be in good standing with their respective churches. The legal duty of Protestant School Boards to hire Jewish or other non-Christian teachers is a matter of some doubt, although considerable numbers have been employed in recent years. It would seem that, in

Montreal and Quebec where there are only the two boards, Protestant and Catholic, and not a Common School Board as in rural districts, there is no legal obligation whatsoever on the part of the government to name non-Protestants and non-Catholics to the school boards. However, during the last two years there has been some amelioration of this rule, and Jewish members of the Protestant Board were named for the first time.

Outside Montreal and Quebec, the legal situation of schools is somewhat different, in the sense that two boards, Protestant and Catholic, are not legally imposed; rather the first board to be established is the Common School Board and the second is the board established by the dissenting Catholic or Protestant minority. In practice, of course, outside Montreal, Quebec and certain regions of the Eastern Townships, virtually all the common schools serve preponderantly French-speaking Roman Catholic majorities and the teachers have been, in large numbers, members of religious orders. In the case of *Perron v. Les syndics d'écoles de Rouyn*,⁹⁶ the Court of Queen's Bench ruled that a Jehovah's Witness who had abjured his Catholic faith remained a Christian, and therefore could by right enter his children into the Protestant dissenting school of the municipality. Mr. Justice Bissonnette ruled that:

Pour être considéré comme protestant, il suffit d'être chrétien et de répudier l'autorité du Pape.⁹⁷

Had the court not so ruled, Perron's children would have been eligible only to enter the Common School of the municipality, which was *de facto*, though not *de jure*, Catholic. In the case of *Chabot v. Les commissaires d'école de la Morandière*,⁹⁸ Chabot, a Jehovah's Witness living in an area where there was only a Common School and no dissenting Protestant school, sought to remove his children from the religious instruction classes, which were, of necessity, Catholic. The school authorities had required the children either to remain for all classes or to leave altogether. The decision of the Court of Appeal is posited not simply on freedom of religion, but also on concepts of natural law. Thus Justice Pratte ruled:

Aussi donc si l'on tient aux droits naturels, le premier de tous les droits, il faut conclure que les enfants qui fréquentent une école ne doivent pas être tenus de suivre un enseignement auquel leur père s'oppose.⁹⁹

Mr. Justice Casey ruled:

What concerns us now is the denial of plaintiff's right of inviolability of conscience, a denial that is coupled with or effected by—and in either case the result is the same—active interference with his right to control the religious education of his children; and at this point I recall what is discussed at length by Mr. Justice Pratte, *supra*: plaintiff is obliged to send his children to a school and he is entitled to send them to the particular one involved in this case. It is well to remember that the rights of which we have been speaking find their source in natural law, those rules of action that evoke the notion of justice which human authority expresses or ought to express but does not make; a justice which human authority may fail to express, and must pay the penalty for failing to express by the diminution or even a forfeiture of its power to command.¹⁰⁰

The whole problem of freedom of religion in schools is so dominated by the constitutional questions having their root in the *B.N.A. Act* that one cannot invoke the doctrine of freedom of religion in these school

cases. However, the Courts have made an attempt to protect religious freedoms of Protestants or Catholics in Common Schools. On the other hand, there is little corresponding judicial deference to interests in religion in the decisions relating to non-Catholic or non-Protestant religious groups. In the case of *Pinsler v. The Protestant Board of School Commissioners of Montreal*,¹⁰¹ the Superior Court ruled that Jewish children entered Protestant schools by grace, not by right, and were therefore lawfully excluded from consideration for scholarships if the Board so wished. The case of *Hirsh v. The Protestant School Commissioners of Montreal*, which ultimately reached Privy Council,¹⁰² is an example of the application of an abstract, mechanical jurisprudence of concepts to a claim dealing with interests in religion. Despite the attempt of the Privy Council and the Supreme Court in this decision to define the school rights of Jews in the Province of Quebec, these rights have remained vague and rather confused.

Footnotes

¹1940 S.C.R. 139.

²See Appendix "A".

³See Appendix "B".

⁴*Le Devoir*, 3 May, 1966, p. 1.

⁵*La Presse* 5 May, 1966, p. 7.

⁶*The Montreal Star*, 4 February, 1966, p. 4.

⁷See *La Tribune de Sherbrooke*, p. 19, the *Montreal Gazette*, the *Montreal Star*, on 21 March, 1966.

⁸9 August, 1966, p. 1.

⁹9 August, 1966.

¹⁰*La Presse*, 9 August, 1966, p. 1; *Montreal Matin*, 9 August, 1966, p. 2, and *Le Journal de Montreal*.

¹¹*Montreal Matin*, September 27.

¹²For text see Appendix "E". And see also the discussion *Le Devoir*, September 30, p. 1, also October 3; *La Presse*, September 30; *The Gazette*, September 30; the *Montreal Star*, September 30; *Montreal Matin*, September 30, 1966.

¹³1959, 37 Canadian Bar Review (C.B.R.), p. 135.

¹⁴1962, 65 *Revue de Notariat*, p. 167.

¹⁵1957 *La Themis*, p. 193.

¹⁶1957, 59 *Revue du Notariat*, p. 321.

¹⁷1963, 65 *Revue du Notariat*, p. 431.

¹⁸(1957-58) 8 *La Themis* 88, Hurlubise et Cloutier.

¹⁹Paris, 1960.

²⁰F. R. Scott, *op. cit.*, p. 136.

²¹Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another whether by positive act, imprudence, neglect or want of skill.

²²Scott, *op. cit.*, p. 137.

²³1959, S.C.R. 121.

²⁴Scott, *op. cit.*, p. 144.

²⁵S.Q. 12 Elizabeth II, 1963, c. 40; R.S.Q. 1964, c. 205. See Appendix A.

²⁶R.S.Q. 1941, c. 76.

²⁷S.Q. 13, Elizabeth II, 1964, c. 46; R.S.Q. 1964, c. 142. See Appendix B.

²⁸R.S.Q. 1964, c. 301. See Appendix C.

²⁹R.S.Q. 1964, c. 48. See Appendix D.

³⁰1949 *Revue du Barreau de la Province de Québec*, 15 and 16.

³¹1896, 26 S.C.R. 20.

³²*Ibid.*, p. 23.

- ⁵³1938, 64 C.B.R. 386.
 - ⁵⁴1938, 64 C.B.R. 386 at p. 391.
 - ⁵⁵1944, R.L. p. 1.
 - ⁵⁶*Ibid.*, p. 5.
 - ⁵⁷See the case of *Raymond v. Abel* 1946, S.C. 251, and *Plamondon v. Carreau* 1938, 76 S.C. 120.
 - ⁵⁸1947, R.L. 257.
 - ⁵⁹*Ibid.*, p. 266.
 - ⁶⁰1954, C.S. 57.
 - ⁶¹*Ibid.*, p. 63.
 - ⁶²See also *Dame Strasberg v. Lavergne*, 1956 B.R. 189.
 - ⁶³1959, S.C.R. 321.
 - ⁶⁴See the judgement of Judge Taschereau, *Ibid.*, p. 335.
 - ⁶⁵1955, S.C.R. 834.
 - ⁶⁶*Ibid.*, p. 841.
 - ⁶⁷1958, C.S. 152.
 - ⁶⁸*Ibid.*, p. 154.
 - ⁶⁹1958, C.S. 427.
 - ⁷⁰*Ibid.*, p. 429.
 - ⁷¹1950 B.R., 125.
 - ⁷²*Ibid.*, p. 132.
 - ⁷³1898, 8 C.B.R. 379.
 - ⁷⁴1921, 30 C.B.R. 459.
 - ⁷⁵*Ibid.*, p. 465.
 - ⁷⁶1938, 65 C.B.R. 104; and 1939 S.C.R. 139.
 - ⁷⁷1938, 65 C.B.R. 105.
 - ⁷⁸1939, S.C.R. 143.
 - ⁷⁹*Ibid.*, p. 144.
 - ⁸⁰See *Raymond v. Abel*, 1946, S.C. 251 and *Plamondon v. Carreau*, 1938, 76 S.C. 120.
 - ⁸¹*Perrault v. Poirier*, 1959 B.R. 447.
 - ⁸²1919, 25 R.J. 322.
 - ⁸³1918, 53 S.C. 543.
 - ⁸⁴1914, 24 C.B.R. 69.
 - ⁸⁵*Ibid.*, p. 75.
- For a treatment of the problem of group defamation both under the law of Quebec and federal law, see Mortimer G. Freiheit, "Free Speech and Defamation of Groups", 1965 Themis, p. 129.
- ⁸⁶34 K.B. 554.
 - ⁸⁷R.S.Q. 1964, c. 48.
 - ⁸⁸See *Shallow v. The Gazette*, 17 K.B. 309 and *Maynard v. Marcheau* 53 K.B. 476.
 - ⁸⁹S.C. No. 513.958; 1966 S.C. 436.
 - ⁹⁰1966, S.C. 436, et 442.
 - ⁹¹This may well be due to the fact that few cases in this field come before the Courts and if they do, are not reported.
 - ⁹²1956, C.S. 30.
 - ⁹³*Ibid.*, p. 36.
 - ⁹⁴*Ibid.*, p. 35.
 - ⁹⁵R.S.Q. 1964, c. 142.
 - ⁹⁶Court of Sessions of the Peace 1965 No. 27-167 District of Montreal.
 - ⁹⁷S.C. No. 700.101. District of Montreal.
 - ⁹⁸Court of Sessions of the Peace, Nos. 11.881, 1966; 12.797, 1966; 12.798, 1966. District of Montreal.
 - ⁹⁹A civil action is apparently to be brought later.
 - ¹⁰⁰It will almost certainly be carried to appeal from the Superior Court.
 - ¹⁰¹Comptois, *op. cit.*, *supra*.
 - ¹⁰²1951, S.C.R. 64.
 - ¹⁰³Superior Court District of Montreal No. 561.864; Nov. 1965.
 - ¹⁰⁴A decision may be expected in 1967.
 - ¹⁰⁵See Roger Comptois, *La Prohibition d'aliéner dans les actes à titre onéreux La Clause Raciale*, 1957, 59 Revue du Notariat, p. 321.
 - ¹⁰⁶1955, S.C.R. p. 834.
 - ¹⁰⁷*Ibid.*, p. 840.
 - ¹⁰⁸Vol. 4, p. 14.

⁸⁸1906, 15 B.R. 400. Judgment delivered in 1900-1902, 32 S.C.R. 357.

⁸⁹Hall J., (1906) 15 B.R. 405.

⁹⁰1918, 54 C.S.

⁹¹1888, M.L.R., 4. C.S. 338.

⁹²Paris, Pichon, 1960.

⁹³*Op. cit.*, p. 135.

⁹⁴*Op. cit.*, p. 139.

⁹⁵See the *Éducation Act*, R.S.Q. 1964, c. 235, *inter alia*, s. 1(25).

⁹⁶1955, B.R. 841.

⁹⁷*Ibid.*, p. 846.

⁹⁸1957, B.R. 707.

⁹⁹*Ibid.*, p. 717.

¹⁰⁰*Ibid.*, p. 721.

¹⁰¹1903, 23 C.S. 375.

¹⁰²1928, A.C. 200.

Appendix A

Section 8 of the *Hotels Act*, Bill 7, passed by the Quebec Legislative Assembly, June 26, 1963 reads:

No owner or keeper of a hotel, restaurant or camping ground shall, directly or through his agent or a third party:

- a. refuse to provide any person or class of persons with lodging, food or any other services offered to the public in the establishment, or
- b. exercise any discrimination to the detriment of any person or class of persons as regards lodging, food or any other service offered to the public in the establishment, because of the race, belief, colour, nationality, ethnic origin or place of birth of such person or class of persons.

Appendix B

Bill 67

An Act respecting discrimination in employment

As Passed By The Legislative Assembly, July 30th, 1964

Her Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. In this Act, unless the context otherwise requires, the following words mean:

- a. "discrimination": any distinction, exclusion or preference made on the basis of race, colour, sex, religion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; but any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination;
- b. "employer": anyone, (including Her Majesty), who has a work done by an employee; but such word does not include:
 1. anyone who has fewer than five employees;

2. any non-profit association or corporation operated exclusively for religious, philanthropic, educational, charitable or social objects, or primarily devoted to the welfare of a religious or ethnic group;
 - c. "employee": a person who works for an employer and for remuneration, but the word does not include:
 1. a person employed as manager, superintendent, foreman or representative of the employer in his relations with his employees;
 2. a director or officer of a corporation;
 3. a domestic servant;
 - d. "association of employees": a group of employees incorporated as a professional syndicate, union, brotherhood or otherwise, having as its object the study, safeguarding and development of the economic, social and educational interests of its members and particularly the negotiation and application of collective labour agreements;
 - e. "employers' association": a group organization of employers having as its objects the study and safeguarding of the economic interests of its members and particularly assistance in the negotiation and application of collective labour agreements;
 - f. "Commission": the Minimum Wage Commission.
2. No employer, or person acting on behalf of an employer or employers' association shall resort to discrimination in hiring, promoting, laying-off or dismissing an employee or in the conditions of his employment.
 3. No association of employees or employers' association shall resort to discrimination in admitting, suspending or expelling a member.
 4. No person, in connection with the hiring of an employee by an employer, shall publish any advertisement or display any notice or exhibit any symbol implying or suggesting discrimination, or require information respecting race, colour, religion, national extraction or social origin.
 5. The Commission shall inquire into the written complaint duly signed by any person that he has been discriminated against contrary to this Act, and endeavour to effect a settlement.

Failing settlement, the Commission, itself or through one of its members or a person appointed by it, may investigate any complaint with all the powers, immunities and privileges of commissioners appointed under the *Public Inquiry Commission Act*.
 - The Commission shall report to the Minister of Labour on every inquiry made under this section.
 6. Every person who infringes this Act shall be liable, on summary proceeding, to a fine of twenty-five to one hundred dollars or, in the case of an employers' association or an association of employees, to a fine of one hundred to one thousand dollars.
 7. No prosecution for an offence under this act shall be instituted except with the written authorization of the Minister of Labour.
 8. This Act shall come into force on the 1st of September 1964.

Appendix C

Revised Statutes of Quebec
Chapter 301
Freedom of Worship Act

Division I
Freedom of Worship

1. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, provided the same be not made an excuse for acts of licentiousness or a justification of practices inconsistent with the peace and safety of the Province, are by the constitution and laws of this Province allowed to all Her Majesty's subjects living within the same. R.S. 1941, c. 307, s. 2.

2. It does not constitute the free exercise or enjoyment of religious profession and worship

(a) to distribute, in public places or from door to door, books, magazines, tracts, pamphlets, papers, documents, photographs or other publications containing abusive or insulting attacks against the practice of a religious profession or the religious beliefs of any portion of the population of the Province, or remarks of an abusive or insulting nature respecting the members or adherents of a religious profession; or

(b) to make, in speeches or lectures delivered in public places or transmitted to the public by means of loud-speakers or other apparatus, abusive or insulting attacks against the practice of religious profession or the religious beliefs of any portion of the population of the Province, or remarks of an abusive or insulting nature respecting the members or adherents of a religious profession; or

(c) to broadcast or reproduce such attacks or remarks by means of radio, television or the press.

Every act mentioned in paragraph (a), (b) or (c) is an act endangering the public peace and good order in this Province.

Every act contemplated in paragraph (a), (b) or (c) is prohibited in this Province. R.S. 1941, c. 307, ss. 2a, 2b and 2c; 2-3 Eliz. 11, c. 15, s. 1.

Appendix D

Revised Statutes of Quebec 1964
Chapter 48
Press Act

1. For the purposes of this Act, the word "newspaper" means every newspaper or periodical writing the publication whereof for sale and distribution is made at successive and determined periods, appearing on a fixed day or by irregular issues, but more than once a month and whose object is to give news, opinions, comments or advertisements. R.S. 1941, c. 337, s. 2.

2. Every person who deems himself injured by an article published in a newspaper and who wishes to claim damages must institute his action within the three months following the publication of such article, or within three months after his having had knowledge of such publication, provided, in the latter case, that the action be instituted within one year from the publication of the article complained of. R. S. 1941, c. 337, s. 3.
3. No such action may be brought against the proprietor of the newspaper, unless, personally or through his attorney, the party who deems himself injured gives a previous notice thereof of three days, not being holidays, at the office of the newspaper or at the domicile of the proprietor, so as to allow such newspaper to rectify or retract the article complained of. R.S. 1941, c. 337, s. 4.
4. If the newspaper fully retracts and establishes good faith, in its issue published on the day following the receipt of such notice or on the day next after such day, only actual and real damages may be claimed. R.S. 1941, c. 337, s. 5.
5. Such retraction must be published by the newspaper gratis and in as conspicuous a place in the newspaper as the article complained of. R.S. 1941, c. 337, s. 6.
6. Whenever the newspaper is not a daily, the rectification must, at the choice of the party who deems himself injured, and at the newspaper's expense, be published in a newspaper of the judicial district or of a neighbouring judicial district, as well as in the next issue of the newspaper itself. R.S. 1941, c. 337, s. 7.
7. The newspaper shall also publish at its expense any reply which the party who deems himself injured may communicate to it, provided that same be *ad rem*, be not unreasonably long and be couched in fitting terms. R.S. 1941, c. 337, s. 8 (part).
8. Whenever the party who deems himself injured has both obtained a retraction and exercised the right to reply, no prosecution may issue if the newspaper publishes such retraction and reply without further comment. R.S. 1941, c. 337, s. 8 (part).
9. No newspaper may avail itself of the provisions of this Act in the following cases:
 - (a) When the party who deems himself injured is accused by the newspaper of a criminal offence;
 - (b) When the article complained of refers to a candidate and was published within the three days prior to the nomination-day and up to the polling-day in a parliamentary or municipal election. R.S. 1941, c. 337, s. 9.
10. Provided that the facts be accurately reported and in good faith, the publication in a newspaper of the following is privileged:
 - (a) Reports of the proceedings of the Senate, the House of Commons, the Legislative Council and Legislative Assembly of Quebec and of their committees from which the public is not excluded;
 - (b) Any notice, bulletin or recommendation emanating from a government or municipal health service;

(c) Public notices given by the Government or by a person authorized by it respecting the solvency of certain companies or regarding the value of certain issues of bonds, shares or stock;

(d) Reports of the sittings of the Courts provided they be not held in camera, and that the reports be accurate.

This provision shall not, however, affect or diminish the rights of the press under common law. R.S. 1941, c. 337, s. 10.

11. The judge may, during a suit for defamation against a newspaper, order the plaintiff to furnish security for costs, provided that the defendant himself furnishes security to satisfy the judgment. The amount of security in each instance shall be left to the sole discretion of the judge. R.S. 1941, c. 337, s. 11.

12. No newspaper may avail itself of the provisions of this Act if the formalities required by the *Newspaper Declaration Act* (Chap. 49) have not been complied with. R.S. 1941, c. 337, s. 12.

13. Every judgment condemning a newspaper at fault must be published in the said newspaper, and at its expense, on the order of the court which rendered the judgment, under penalty of contempt of court. R.S. 1941, c. 337, s. 13.

Appendix E

Civil Code Revision Office Report of the Civil Rights Committee Montreal 1966

Introduction

In proposing the inclusion in the Code of a declaration of civil rights, the Committee wished to bring together the fundamental principles which accord a central position to the individual in private law. It is true that the codifiers in 1866 wrote some of these principles into their work, but they are scattered¹ and constitute so brief a statement that the Courts have been obliged to develop the principles through recourse to the general rules of civil responsibility and the provisions of the Code relating to public order and good morals.

This work of elaboration by the Courts is today sufficiently advanced for it to be possible, and indeed necessary, to codify anew this whole field of the law, especially since several provisions of the first title of the Book on Persons, dealing with the enjoyment and loss of civil rights, have fallen into disuse, whereas others require greater development or at the very least a re-formulation. Moreover, the Committee did not hesitate, where appropriate, to round out the existing law when it appeared necessary that legislative action fill in the gaps left by the jurisprudence or

settle its uncertainties and bring the law into closer harmony with contemporary preoccupations. The aim is, on the other hand, to establish in the Code certain rights of the individual in a sufficiently precise way so that Courts and jurists may apply them to factual situations and, on the other hand, to give them an educative value by stating them clearly and concisely.

Indeed, Quebec cannot stand aside from the vast movement for the extension and protection of human rights which characterizes the present times. In particular, the civil law must recognize in the individual all those rights which reflect the increasingly liberal idea of the place of man in society. Infringements of the fundamental rights and freedoms of individuals, which occurred for several decades on all continents and especially during the course of the Second World War, have provoked a salutary reaction, of which the 1948 *Universal Declaration of Human Rights* constitutes the principal milestone.² This Declaration is not a treaty and, of course, from a strictly legal point of view, states are not bound by it; nonetheless, its influence has been and remains immense.

Many countries have included in their constitutions, charters of the rights of citizens which bind their domestic courts. In addition, a common civilization has made it possible for the member-states of the Council of Europe to create, through the Treaty of Rome signed in 1950, supranational institutions empowered to arbitrate and, in certain cases, to settle disputes between individuals and their own governments in the realm of human rights. Finally, the United Nations itself has been working for several years on the drawing up of Pacts guaranteeing human rights, the aim of which is to impose on States very precise rules of conduct.

Canada has wanted to be associated with these developments, even though its federal structure complicates the implementation of international standards. In 1960, the *Canadian Bill of Rights* was passed which proclaims the right of the individual to life, liberty, security of the person and enjoyment of property, as well as the freedoms of religion, speech, assembly and association, and of the press.³ However, it was carefully specified in the Act itself that these provisions "shall be construed as extending only to matters coming within the legislative authority of the Parliament of Canada". It is for provincial legislatures to adopt the laws necessary for the protection of those human rights which come within their competence, notably civil rights; they can likewise legislate within their sphere of authority when the sanction of a right falls under both federal and provincial jurisdictions, as is the case with the fundamental freedoms.

The Quebec civil law has a long tradition of protection of individual rights. This tradition has developed through an interpretation of the principles of civil responsibility and of the action in damages so that it is now realized the Civil Code provided an instrument of protection the full importance and efficacy of which has perhaps not been appreciated. The Legislature has in recent times given its attention to the more

specific problems raised by racial and other forms of discrimination. Two important laws have been adopted prohibiting discrimination based on grounds of race, religion or ethnic origin in hotels and restaurants as well as in employment.⁴ Following the example of several foreign civil codes which give a special place to rights of personality,⁵ the Committee proposes that the Quebec Legislature proceed with the work already undertaken by codifying and completing the human rights coming within the civil law—that is to say, the law dealing with relationships between individuals.

Here, admittedly, only one aspect of human rights is involved. It was the desire of the Committee to remain within the civilian tradition, and it was felt inopportune to incorporate in the Code, rules which primarily concern the relationships between the individual and the state or which fall within public law, such as the citizen's political rights. Despite the limits imposed by the discipline and techniques of the civil law, however, it was thought that the protection of the rights and freedoms of the person would be considerably strengthened by the inclusion in the Code of a special title devoted to civil rights. It is important to note, therefore, that the draft submitted by the Committee cannot take the place of a complete charter of human rights, especially as regards political, social and economic rights.

Finally, the Committee wishes to point out that the word "person", found in most of the proposed articles, refers primarily to human beings. It is evident that bodies corporate enjoy certain rights guaranteed in this draft but it seemed advisable to avoid involvement in the special rules relating to them.

First Part Draft Modifying The Civil Code Relating to Civil Rights

Article 1

Every human being possesses juridical personality.

Whether citizen or alien, he has the full enjoyment of civil rights as otherwise expressly provided by law.

Explanatory Note

Most civil codes and jurists recognize that every person is endowed with juridical personality, which belongs to him by reason of his very existence, and which comprises a number of fundamental rights or inherent attributes intended to protect his physical and moral individuality. If, however, one attempts to define precisely the nature of these rights of personality, or even to draw up a list of them, great theoretical difficulties are encountered. There are as many definitions and lists as there are schools of thought, and the Committee did not think it advisable to pro-

voke controversy on the subject by accepting one definition rather than another. It suffices to note that all civilized countries recognize the right of every individual to the enjoyment of juridical personality: the Committee believes that this fundamental principle, already implicit in Quebec law, should be given formal consecration in the very first article of the Code.

Our law has traditionally distinguished between British subjects and aliens⁶ but, in the opinion of the Committee, there no longer exists today any reason for continuing this distinction, at least so far as the enjoyment of civil rights is concerned. Moreover, the general tendency of civilized states is to move in this direction.⁷

The equality of the citizen and the alien is, however, subject to some exceptions, for the laws of most countries deny aliens certain rights and privileges which are granted only to their own nationals. The Quebec Legislature likewise restricts to citizens the exercise of certain professions.⁸ The Committee has taken these exceptions into account by providing that the principle of equality affirmed in this Article is subject to express provisions of law.

Article 2

Everyone has the right to life, to physical security and to personal freedom.

He is also endowed with the other fundamental freedoms, such as freedom of conscience, freedom of opinion and expression, freedom of peaceful assembly and freedom of association.

Explanatory Note

The first paragraph of this draft Article sets forth the fundamental rights of personality. The right to life, to physical security and to personal freedom are already protected by Quebec law: the Courts have based themselves on articles 1053 and 1056 of the Civil Code to sanction their infringement. The Committee wishes to emphasize that the expression "physical security" must be understood in the widest sense to include protection of the mental and psychological integrity of the human person.

The second paragraph is devoted to fundamental freedoms, often referred to by French civilians as "libertés morales". In Canada, these freedoms are of British origin, but they have traditionally found protection in the civil law as well. Moreover, judicial decisions bring out the complementary role of the federal and provincial jurisdictions in the protection of fundamental freedoms. In many instances the most effective recourse against a governmental body, a public officer or a private individual who infringes the liberties of another, remains the civil action in damages. The decisions of the Courts provide numerous examples. Because fundamental freedoms are protected by the private law, the Committee considers it necessary to place them, as does the French doctrine, among the most important of civil rights.

Article 3

Everyone in peril has a right to assistance.

No one may, without reasonable excuse, refuse or neglect to give help to anyone in peril or to provide him with the aid required to save his life.

Explanatory Note

The obligation imposed by this Article is a corollary of the preceding Article. It is difficult to determine to what extent this principle is recognized by the civil law at the present time, for there appears to be no jurisprudence on the point. The Committee is of the opinion, however, that a person who, without reasonable excuse, refuses or neglects to give help to a person in peril commits a fault and renders himself liable. This obligation is already recognized in a limited way in the *Highway Code*,⁹ and the Committee considers it advisable to render it general in scope.

With respect to the interpretation of the expression "without reasonable excuse", the Committee deems it advisable to leave to the Courts its application in the particular circumstances of each case.

Article 4

Everyone has a right to the protection of his dignity, his honour and his reputation.

Explanatory Note

In proposing this Article, the Committee has no intention of creating new causes of action. The decisions of the Courts usually mention honour and reputation, but they also contain the idea of the protection of human dignity.

The distinction between dignity, honour and reputation cannot always easily be drawn. For example, wrongs such as the infliction of humiliating treatment in the absence of witnesses may be committed which do not, strictly speaking, damage a person's honour or reputation, but which do, nevertheless, injure his dignity. The Committee considers it necessary to use these three expressions in order to give full effect to the principles already inherent in the jurisprudence.

Article 5

Everyone has a right to privacy.

Explanatory Note

This expression, found in Article 12 of the *Universal Declaration of Human Rights*, has begun to be applied in Quebec jurisprudence.

Since the right to privacy is threatened to a greater extent today than it was in the past, the Committee deems it advisable that it be given general expression.

Article 6

Everyone has a right to the peaceful enjoyment and the free disposition of his property, save as expressly provided by law.

Explanatory Note

The peaceful enjoyment and free disposal of property are corollaries of the ownership and possession already protected by the Code, but in the estimation of the Committee their importance to the individual justifies that they be placed in this chapter devoted to civil rights.

These principles are not, however, without some exceptions, for the Legislature has restricted them more than once. The Committee considers, nonetheless, that any such restriction must be expressly provided for in the law.

Article 7

A man's home is inviolable.

No one may enter upon property lawfully occupied by another without his express or implied consent or unless authorized by law.

Explanatory Note

This Article covers not only the case where the fact of entering upon the property of another, without authorization, causes damage, but also that in which an individual enters a dwelling without having caused any physical damage. In the Committee's opinion, there should exist, as maintained by some Quebec judges, a recourse for reparation of the moral injury caused by such intrusion.

The Committee chose the expression "upon property lawfully occupied by another" in the second paragraph because it is intended to include not only the domicile or residence of a person, but also his land, together with any building and its appurtenances of which he is owner, tenant or possessor.

Article 8

Everyone has the right, subject to express provision of law, to enter any place open to the public and to obtain whatever goods and services are available there, without regard to such distinctions as race, sex, social origin or convictions.

Any provision containing such a distinction in a contract, will, or other juridical act respecting the enjoyment or alienation of property is contrary to public order and taken as not written; however, distinctions justified by their charitable or philanthropic character are not contrary to public order.

Explanatory Note

The Quebec Legislature for a number of years has enacted laws to put an end to distinctions of race, sex, religion, national extraction or social

origin, at least insofar as hotel-keeping and employment are concerned. There is no legislation, however, prohibiting discrimination generally or filling the gaps in a jurisprudence that has remained too tolerant in the case of owners of establishments open to the public. Moreover, the practice of inserting racial clauses in contracts remains frequent. The principle of freedom of trade, for example, has been so extended as to enable theatre owners to refuse an orchestra seat to a person for reasons of race.

The proposed Article does not, in principle, prohibit all kinds of discrimination. The Committee considers that it cannot have recourse to those penal and administrative techniques that are additional means of carrying on the struggle against discrimination. It therefore submits an Article prohibiting it in the areas where civil law techniques may properly be applied.

The Article mentions only certain discriminations; the draft adopted by the Committee indicates that the list is not limitative.

In the first paragraph, the Committee uses the expression "place open to the public", which designates all places, even though they be privately owned, where the public is invited to enter. Examples include theatres, taverns, restaurants and stores. This paragraph is, of course, proposed under reserve of the laws and regulations which prohibit access to certain places to various categories of people because of age, for example.

The Committee wishes to make it clear that a person who enters a place open to the public has also the right to the services and the goods available in such place. Jurisprudence a quarter of a century old makes each proprietor the sole judge of the reasons for refusing to serve a customer. The Committee is of the opinion that this rule must be changed and therefore proposes new law on this point.

It is to be observed that it is not the aim of the second paragraph to cover all possible cases of discrimination in juridical acts; for example, the lease and hire of services is covered by special legislation requiring administrative machinery.

Finally, the Committee is of the view that in the second paragraph an exception should be made in favour of distinctions justified by their charitable or philanthropic character. For example, a clause in a will by which an immovable is bequeathed for the purpose of providing education to persons belonging to a particular religion would not be null.

Article 9

No one may renounce the enjoyment of civil rights and fundamental freedoms, nor forego the free exercise thereof in a manner contrary to law, public order or good morals.

Explanatory Note

This Article makes clear that the civil rights and fundamental freedoms defined in the preceding articles cannot be objects of commerce. The Committee drew this Article in part from several foreign codes, but it

desires to emphasize that the principle is already established in certain provisions of the Quebec Code, such as Articles 13 and 1667.

It goes without saying that certain contracts, such as the lease and hire of services, involve a surrendering of freedom for a limited period of time; anyone is likewise free to donate his blood for some other person's benefit even though this act affects the donor's physical integrity. These examples suffice to show the importance of the judicial role in the appreciation of the facts and in the determination of the limits beyond which the contracting parties may not go without violating the law, public order and good morals.

Article 10

Anyone who suffers an unlawful interference with his civil rights or fundamental freedoms may demand an injunction and the reparation of all resulting damage, moral or material.

Explanatory Note

The civil right and fundamental freedoms envisaged in this chapter are already protected to a great extent by the general principles of civil responsibility. The right to obtain the cessation of a wrong is also recognized by the Courts by means of injunctions and *habeas corpus* proceedings, etc., and the courts often order that a wrong cease by proceedings other than these, for example in cases of abuse of rights and libel.

In view of their great importance, the Committee is of the opinion that the protection of these fundamental rights should be fully established in the present chapter by providing in all cases for a recourse to injunction and for the reparation of all damages, moral as well as material.

Second Part Draft Modifying Certain Texts of the Civil Code and Provincial Statutes Relating to Civil Rights

The Committee recommends that on the adoption by the Legislature of the chapter devoted to civil rights, various changes be made to the Civil Code and to those Statutes of the Province the present provisions of which would conflict with the new legislation.

1. Changes in the Civil Code

Articles 18 to 25:

To be repealed completely by reason of the adoption of the chapter devoted to civil rights.

Article 26:

To be repealed, the capacity of the alien to serve as a juror being governed by section 2 of the *Jury Act*, R.S.Q. 1964, c. 26.

Article 30:

To be repealed completely by reason of the abolition of civil degradation for the purposes of the civil law.

Article 835:

To be amended by reason of the abolition of civil degradation, by the repeal of that part of the text which follows the semi-colon.

Article 844, paragraph 2:

To be amended by reason of the abolition of civil degradation by the removal of the words "to civil degradation nor".

Article 986:

To be amended by reason of the abolition of civil degradation, by the removal, at the end of the Article, of the words "Persons who are affected by civil degradation".

Article 1208, paragraph 3:

To be amended, by reason of the abolition of civil death, by the removal of the words "not civilly dead, and not deemed infamous by law".

2. Amendments to the *Act to abolish civil death*

(1906) 6 Ed. VII, c. 39

Since the Act abolishing civil death (1906) created civil degradation for those condemned to death or to perpetual personal punishment, persons conditionally released remain in a state of interdiction; section 7 of the Act, in effect, only makes exceptions in cases of pardon, and the remission of the penalty or its commutation.

The Committee considers that the very notion of civil degradation is irreconcilable with its concept of individual rights and with the spirit in which this chapter is drafted. It is not an aim of the civil law to inflict punishment nor to make itself the auxiliary, as it were, of penal law. Consequently, the Committee believes that civil degradation, a vestige of the past, ought to be abolished. It is recommended that incapacity to exercise political or public rights be confined to special statutes such as the *Election Act* or the *Jury Act*.

Systems 3, 4, 5, 6, 7, and 8:

To be repealed by reason of the abolition of civil degradation.

Footnotes

¹See for instance 407 and 985.

²See also the Charter of the United Nations, article 13, and the Genocide Convention (1948).

³*An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms* (1960) 8-9 Eliz. II, c. 44.

⁴*Hotels Act*, R.S.Q. 1964, c. 205, s. 8; *Employment Discrimination Act*, R.S.Q. 1964, c. 142.

⁵See, for example, the Austrian Civil Code (1810), articles 16, 17, 19, 1329 and 1330; the German Civil Code (1900), articles 823, 824, 826 and 847; the Swiss Civil Code (1912), articles 11, 12, 27 and 28; the Egyptian Civil Code (1948), articles 48 to 51; the Ethiopian Civil Code (1960), articles 8 to 32. See also the draft French Civil Code (1953).

⁶Civil Code, articles 18 to 27.

⁷Thus article 35 of the 1953 draft French Civil Code provides that "the alien enjoys

in France the same rights as nationals except for political rights and those expressly withheld by law" (our translation).

⁸See, for example, the *Bar Act*, R.S.Q. 1964, c. 247, s. 75; the *Medical Act*, R.S.Q. 1964, c. 249, ss. 30, 46 and 47; the *Pharmacy Act*, R.S.Q. 1964, c. 255, s. 8, subsection 2 (a); the *Agronomists Act*, R.S.Q. 1964, c. 260, s. 25; the *Dental Act*, R.S.Q. 1964, c. 253, s. 64.

The Federal Parliament likewise restricts the ownership of Canadian ships and radio stations to British subjects or citizens: the *Canada Shipping Act*, R.S.C. 1952, c. 29, s. 6; the *Broadcasting Act*, 1958, 7 Eliz. II, c. 22, s. 14.

⁹R.S.Q. 1964, c. 231, s. 61, providing that the driver of an automobile involved in an accident shall remain at the scene and render all reasonable assistance.

The Process of Constitutional Amendment For Canada

Dean W. R. Lederman

January, 1967

This paper also appears in the *McGill Law Journal*, Vol. 12, No. 4, 1966

"In June, 1966, the Lesage Government was defeated by the National Union Party of Daniel Johnson, which had been explicitly opposing the Fulton-Favreau formula. With the Johnson Government in power in Quebec, it is now clear that the Canadian Constitution is open for review once more." Dean Lederman discusses the methods of constitutional change as they now confront us, the question of whether the federal constitution should be patriated and the terms on which the patriated constitution could then be amended.

The Process of Constitutional Amendment for Canada

Introduction

In 1967, Canada completes her first century as a federal country under the *British North America Act*. Also, at this particular time, Canadians find themselves urgently considering and discussing whether or not important changes should now be made in our federal constitution, that constitution having served us so far almost without substantial amendment. The main pressure for change comes from claims for better constitutional recognition of the French fact in Canadian life, both within and beyond the boundaries of the province of Quebec. Among other things, this raises questions of the methods of constitutional change in a federal country which accordingly now require our attention in Canada more than ever before. This paper expresses the author's personal comments, opinions and analyses concerning the central issues of method in constitutional change as they now confront us. Do we now bring the federal constitution home to Canada and, if so, on what terms as to domestic control of change or amendment?

It appeared quite recently that this question was settled. A complete set of domestic constitutional amending procedures was agreed upon at a Federal-Provincial Conference of the Prime Minister of Canada and the Premiers of the Provinces on October 14, 1964, as embodied in the text of a Bill entitled *An Act to provide for the amendment in Canada of the Constitution of Canada*. This was popularly known as the Fulton-Favreau Formula, being named for the two federal Ministers of Justice primarily responsible for negotiating its final form. In February, 1965, a White Paper on *The Amendment of the Constitution of Canada* was issued under the auspices of the Honourable Guy Favreau, then federal Minister of Justice.¹ This document set forth the history and present position respecting amendment, the story of the development of the Fulton-Favreau Formula and an analysis of the meaning of the Formula. Nevertheless second thoughts set in, primarily but not only in the province of Quebec, and the final agreement of the Lesage Government and the Legislature of Quebec was not forthcoming as expected. Then in June of 1966 the Lesage Government was defeated by the National Union Party of Daniel Johnson, which had been explicitly opposing the Fulton-Favreau Formula. With the Johnson Government in power in Quebec, it is now clear that the whole problem of patriation and amendment of the Canadian Constitution is open for review once more.

In any event, the White Paper of 1965 is a full and careful historical document, the text of which was accepted as accurate by the federal

and provincial governments before it was published. There is no point in recapitulating here what has been well-covered in the White Paper. Accordingly, in what follows I assume a knowledge of the main elements of the White Paper and of the chief features of the proposed set of procedures for amendment known as the Fulton-Favreau Formula.

The Constitution and the Technical System of the Fulton-Favreau Formula

About the first thing to be done if one is to consider methods of amending the constitution is simply to define the meaning of the category 'constitution' or 'constitutional law'. All law flows from or is part of the constitution, so that there is a sense in which all laws are constitutional laws, finding their legitimate ancestry proximately or remotely in what Professor Hans Kelsen called the Basic Norm.² Obviously one cannot subject all legal change to special amending procedures, so that more precise and discriminating definitions of the content of the 'constitution' are necessary. An excellent short definition is that of Sir Ivor Jennings,³ who said that the word 'constitution' in its more precise sense "means the document in which are set out the rules governing the composition, powers and methods of operation of the main institutions of government, and the general principles applicable to their relations to the citizens." His example was the Constitution of the Irish Republic. In Canada, we have to think in terms of many statutory documents and, as well, of appropriate parts of the historically received English common law concerning the Crown. Nevertheless, I suggest that the sort of things we consider to be peculiarly constitutional, whatever their respective forms, are those described by Sir Ivor Jennings. And, of course, not all these things need to be subjected to special legislative procedures.

The Fulton-Favreau Formula has to face this many-sided problem of definition, and does it very well. It employs the general phrase 'the Constitution of Canada', and then proceeds to give this further definition in two ways: by examples in Section 11 and by spelling out subdivisions of constitutional matters in Sections 2 to 8. Section 11 reads as follows:

Without limiting the meaning of the expression "Constitution of Canada", in this Part that expression includes the following enactments and any order, rule or regulation thereunder, namely,

- (a) the British North America Acts, 1867 to 1964;
- (b) the Manitoba Act, 1870;
- (c) the Parliament of Canada Act, 1875;
- (d) the Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2;
- (e) the Alberta Act;
- (f) the Saskatchewan Act;
- (g) the Statute of Westminster, 1931, in so far as it is part of the law of Canada; and
- (h) this Act.

This seems to suggest the Jennings' concept of the word 'constitution',

the examples giving some precision of definition without restriction to the sort of thing exemplified.

In addition, as indicated, Sections 2 to 8 of the Formula spell out more precisely defined sub-divisions of things constitutional, including, it should be noted, the separate constitutions of the respective provinces. In this way different types of constitutional change are assigned to different amending procedures, as deemed appropriate. For example, amendments affecting "the powers of a province to make laws" would require a statute of the Parliament of Canada and the concurrence of the legislatures of all the provinces.⁴ Thus a requirement for unanimity would be imposed respecting the whole of the federal distribution of legislative powers. On the other hand, a statute of the Parliament of Canada having the concurrence of "the legislatures of at least two-thirds of the provinces representing at least fifty per cent of the population of Canada" was thought to be enough to effect change in "the principles of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada."⁵ Then, as a final example, when it came to amending the constitution of a province, "except as regards the office of Lieutenant-Governor", the Formula provides that a simple statute of the provincial legislature concerned would be effective (as indeed it has been since 1867).⁶ Thus, for different sub-divisions of constitutional matters we go all the way from extraordinary and rigid to ordinary and flexible processes of change in the proposals made.

The main point to be grasped here is that the technical scheme of Part I of the Fulton-Favreau Formula is very ingenious and very good. Discriminating between different types of constitutional matters for purposes of assigning them to different modes of amendment in some way much like this is essential for any complete scheme of constitutional amendment. Moreover, the careful reader of the Formula will note that this is done there in such a way as to indicate the priorities between the several clauses in Part I in the event of overlapping of the concepts they contain. The realities and difficulties of later interpretation have been carefully kept in mind. In any event, to continue with the main point, there will always be some things so basic and so much the concern of all that only unanimity is appropriate to effect change. Also there will always be some other things less basic but still very important and affecting all, so that something like the rule of two-thirds and fifty per cent is appropriate as an extraordinary process for change. And there will always be still other constitutional matters that are appropriate for change within a single province simply by a statute of that province, or at the federal level by a simple statute of Parliament. These then are examples of discriminations made in Part I of the Formula, and, as a matter of technical system and good drafting, a scheme with this multiplicity of discriminations seems almost inevitable. It seems to arise almost necessarily out of the history and nature of our constitutional life in Canada. As the White Paper shows, this range of distinctions has

been developed in the course of several official constitutional enquiries and conferences over a long period of years.⁷

It must be remembered that no draftsman can ever make everything in a complex procedural statute absolutely clear. Not everything is clear about the interpretation of the Fulton-Favreau Formula, as some critics of it have shown.⁸ But every draftsman reaches the point in such cases where the resolution of residual uncertainties is best left to be worked out by interpretation in the Courts, and, in my view, so far as technical clarity is concerned, that point has pretty well been reached in the 1964 Formula.

Nevertheless, in praising the system and technique of the drafting of Part I of the Fulton-Favreau Formula, I am not necessarily upholding the substance of what the Formula does in every respect. I would agree in principle, for example, that too many constitutional matters are under the rule of unanimity and too few under the more flexible rule of consent by two-thirds of the provinces comprising fifty per cent of the country's population. Whether one should accept the present proposed Formula in spite of this imperfection, because there is some greater good to be served by so doing, is a question to be discussed in Part III of this essay. The point now to be made is that, if we do decide to change the substance of what Part I of the Formula proposes, we should not throw out the technical baby with the substantial bath water. Those who say that Part I of the Fulton-Favreau Formula is an unnecessarily complex piece of drafting seem not to have understood that the complications genuinely reflect the difficulties of the problems being confronted. The meaning of the category 'constitutional law' is very complex and wide-ranging as a matter of systematic definition, hence any comprehensive scheme of amendment must have an appropriate range of distinctions linked to different procedures, if in this respect the law of the constitution is to meet the needs of the country. In other words, a scheme that differs in important ways in substance from Part I of the Fulton-Favreau Formula is likely still to be just as complex in form. Indeed, if the new draftsman is as wise as the old one, the form will be much the same.

Earlier I stated the view that the Fulton-Favreau Formula puts too many constitutional matters under the rule of unanimity but that perhaps this imperfection should be accepted if some greater good can be served thereby. This relates to bringing the Canadian Constitution home, the subject of the next part of this essay.

The Present Position Respecting Amendment to the Constitution of Canada: How to Bring the Constitution Home

The important part of our constitution respecting current issues of amendment and patriation is given in certain critical sections of the *B.N.A. Acts*.⁹ The problems may be adequately considered if discussion here is confined to two types of constitutional matters; (1) the distribu-

tion of legislative powers between the Parliament of Canada and the legislatures of the provinces, and (2) some elements of the structure or composition of the Parliament of Canada. In these respects the old supremacy of the Imperial Parliament at Westminster has been formally preserved by Section 7 of the *Statute of Westminster*, 1931,¹⁰ though the same Statute declared the abolition of that supremacy in all other respects for Canada. And even regarding the reserved matters of amendment, the preamble to the *Statute of Westminster* and the declarations by Imperial Conferences to which it refers, plainly imply that complete autonomy was to be Canada's for the asking, if and when the various governments of federated Canada could agree among themselves on the necessary domestic procedures for such amendments. There has not yet been agreement, so we must ask: what is the present position?

After reviewing the procedures leading to amendments of the *B.N.A. Act* in the period 1867-1964, the White Paper summarizes the basic constitutional position in four propositions which may be briefly expressed as follows.¹¹

(1) Although an Act of the United Kingdom Parliament is necessary to amend the *B.N.A. Act*, "such action is taken only upon formal request from Canada. No Act of the United Kingdom Parliament affecting Canada is therefore passed unless it is requested and consented to by Canada. Conversely, every amendment requested by Canada in the past has been enacted."

(2) The request must take the form of a joint address of the Canadian House of Commons and Senate to the Crown praying that the appropriate measure be laid before the Parliament of the United Kingdom.

(3) "The Canadian Parliament will not request an amendment directly affecting federal-provincial relationships without prior consultation and agreement with the provinces."

(4) "No amendment to Canada's Constitution will be made by the British Parliament merely upon the request of a Canadian province." The British Government will not move the British Parliament to act except on a request originating with the Federal Government of Canada.

Such is the existing method of constitutional amendment for matters still specially entrenched in the *B.N.A. Acts*. Thus we see that our present basic law of amendment has been made by long-standing official precedent, custom and practice, modifying the constitutional law of the old British Empire in the manner just indicated. Anyone who doubts the validity and force of such custom, convention and practice should read again the preamble to the *Statute of Westminster*, 1931, which makes it clear that even that Statute purports to be declaratory of a basic 'constitutional position' already 'established' by other means than statute, e.g., the agreed declarations or conventions of Imperial Conferences.

In any event, the result is that in critical respects, amendment of the Canadian Constitution in the matters indicated consists of some steps that must be taken in Canada followed by others that must be taken in the United Kingdom. While the latter are purely formal now, neverthe-

less they represent a respect in which the Canadian Constitution is not now and never has been at home. Bringing it home then means to make into law a set of amending procedures that can be carried out in Canada entirely by Canadian governments, legislative bodies, or electorates, acting severally or in combinations of some kind. If we are to have legitimate as distinct from revolutionary change, then the present method of amendment focussed on London should be followed one last time to institute a new domestic method for amendment focussed on Canada. Rules made by custom and convention seem already to have done as much as they can do to bring the Canadian Constitution home to Canada. What we now need is to acquire at one stroke a complete and precise set of domestic procedures for amending the Canadian Constitution. The slow and piece-meal development characteristic of custom and precedent as law-making processes is not now appropriate for this task. The only proper and legitimate way to obtain the complex scheme needed, in one operation and at the moment of our own choosing, is by a statute of the United Kingdom Parliament enacted in response to the existing request-and-consent rules as the last statute for Canada of that Parliament. This would in effect repeal Section 7 of the *Statute of Westminster* and make Canadian legislative autonomy formally complete in the last area where up to this point it has been formally reserved. This is what successive federal governments at Ottawa have attempted to do by agreement with the provinces. This is what the Pearson Government has attempted to do with the Fulton-Favreau Formula. It should be noted that Section 10 of the Formula, the so-called renunciation clause (from the point of view of the Parliament of the United Kingdom), would terminate for all purposes the request-and-consent procedure as a means of putting British statutes into force in Canada.

This brings me to my basic point about the merit of the Fulton-Favreau Formula *as a means of bringing the Constitution home*. It is true that the Formula is rigid in that it applies the rule of unanimity to the whole range of the distribution of legislative powers between Parliament and the provincial legislatures. Nevertheless, we are under the rule of unanimity now in this respect by virtue of the existing request-and-consent rules. All we have to do to bring the Constitution home is to substitute a domestic rule of unanimity for one focussed on London. If we are stuck with the rule of unanimity anyway for the present, and apparently we are, why not do this? It is embarrassing for the British and humiliating for Canadians to maintain any longer these obsolete and incongruous formal steps of requesting the British Parliament to act for us. Accordingly, my view is that we should use the Fulton-Favreau Formula as a means of bringing the Constitution home. Then later, under the Formula, if we can get unanimous agreement, we can modify the scope of the Formula's rule of unanimity and place more matters under the rule permitting change by the concurrence with Parliament of at least two-thirds of the provinces comprising at least fifty per cent of the country's population.

The opponents of the Fulton-Favreau Formula as a means of bringing the Constitution home make strange companions. On the one hand is a group who favour stronger powers at the centre for Parliament and who fear that the rule of unanimity would prevent this being brought about by amendment now or in the future even though the need for it was very great. On the other hand is a group, particularly strong in the province of Quebec, who want greater powers assigned to the provinces, or at least to the province of Quebec, and who fear that the rule of unanimity would prevent such changes by amendment now or in the future. But, the point is that we are under the rule of unanimity anyway, and neither of these groups is worse off if the requirement is embodied in a domestic procedure rather than in one that takes us to London.

With all due respect to both groups of opponents of the Fulton-Favreau Formula, it does seem that some of them must be harbouring the hope that there might be circumstances in which they could persuade the British Government and Parliament to amend the Constitution of Canada respecting the distribution of legislative powers, in disregard of the convention requiring unanimous consent of the provinces before the Canadian Parliament requests such an amendment. I do not think the present convention permits the British Government and British Parliament to override any provincial dissent in this type of constitutional matter. In the face of any provincial dissent, I think the present convention requires that the British Government and Parliament do nothing, simply regarding the request from the Canadian Parliament in these circumstances as improper, that is, as unconstitutional or illegal. It would be an intolerable reversion to colonial status to suggest that the British Government or Parliament could be or should be involved in any substantial way in decision-making as to whether or not to modify the federal distribution of legislative powers in Canada. If they were asked to override provincial dissents in matters of this type they would be substantially involved. To repeat, we should use the Fulton-Favreau Formula *as the means to bring the Constitution home*. Once we have it home on these terms, the Formula itself contains the procedures whereby its own undue rigidity could be modified if Canadians themselves could reach the point where the Parliament of Canada and the legislatures of the provinces were agreed about how to do it. If we cannot reach that point, we are going to have to rest upon the *status quo* anyway.

We may turn now to another point that should be made concerning the merit of the Fulton-Favreau Formula. So far, the argument has proceeded in relation to amendments or proposed amendments to the federal distribution of legislative powers. But there is another important type of amendment that has figured in federal-provincial relations. I refer to the composition of Parliament as an institution—as our central legislative body. For example, an amendment of the *B.N.A. Act* was required to re-adjust representation in the House of Commons, that is to change the system whereby each province was given its quota of members in proportion to its population.¹² Between 1867 and 1949, such

amendments were secured by an Act of the British Parliament in response to a joint address from the Canadian Parliament. As the convention developed in this class of matter, provincial consents were not necessary and the provinces were not consulted. In effect, then, a federal government at Ottawa could obtain this type of amendment by its own decisions alone. In 1949, without consulting the provinces, the Federal Government moved the Parliament of Canada to request an amendment of the *B.N.A. Act* which provided in effect that, in all cases appropriate for use of the joint address procedure without provincial consent, changes in the Constitution of Canada could be made by an ordinary statute of the Parliament of Canada. The British Parliament passed the amendment as requested,¹³ and a new class (1) of Section 91 of the *B.N.A. Act* was thereby enacted. It states that the legislative authority of the Parliament of Canada includes:

The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

An example of the use of this new power occurred in 1952 when the Parliament of Canada enacted a statute providing a new Section 51 of the *B.N.A. Act* respecting the provincial quotas by population for members in the House of Commons.¹⁴ More than one provincial government had protested that the 1949 amendment went too far and that the provinces did have a real interest in the composition of the House of Commons and matters of like nature. Hence the provinces contended that the power of change should not rest with the Canadian Parliament alone. Prime Minister St. Laurent promised that, if the federal and provincial governments could agree on over-all domestic amending procedures, federal powers in this respect could be re-written somewhat in an effort to meet the objections.¹⁵ This was actually accomplished some years later in the Fulton-Favreau Formula produced by the Federal-Provincial Conferences of 1964. Section 12 of Part II of the Formula would repeal class (1) of Section 91 of the *B.N.A. Act*, as enacted in 1949, and substitute for it Section 6 of Part I of the Formula. The latter section waters down very considerably the powers given the Parliament of Canada in 1949. For example, a change in "the principles of proportionate representation of the provinces in the House of Commons" would require under the Formula a statute of the Parliament of Canada followed by the concurrence of at least two-thirds of the provinces having at least fifty per cent of the population of the country. As stated earlier,

the 1949 statutory powers of the Canadian Parliament were essentially the same as those the Canadian Parliament had between 1867 and 1949 by virtue of joint addresses not requiring consultation with the provinces. The substance of power and decision-making did not change in 1949, only the form of its exercise. Hence Section 6 of the 1964 Formula does embody a reduction of federal power in relation to 1867 and 1949. It represents a major concession by the Federal Government to the provinces, no doubt in an effort to win their agreement to the entire Formula. The Federal Government gets little credit for this from anyone, when in fact it deserves a great deal of credit for seeking to meet provincial complaints in this reasonable way.

Strangely enough though, Section 9 of Part I of the 1964 Formula seems designed to obscure what is really happening in this respect. Section 9 says:

Nothing in this Part diminishes any power of the Parliament of Canada or of the legislature of a province, existing at the coming into force of this Act, to make laws in relation to any matter.

This is technically true of Part I of the Formula, but is not true of the total effect of the Formula as soon as one reads Section 12, the first section of Part II (Section 12 repeals class (1) of Section 91 of the *B.N.A. Act* as enacted in 1949). The White Paper carefully refrains from explaining that the combined effect of Sections 6 and 12 of the Formula is to negate Section 9 of the Formula in this respect. Perhaps Section 9 of the Formula is an attempt to placate the more extreme partisans of strong central power. If so, it doesn't quite come off. Anyway, Section 9 should simply be dropped from the Formula and Section 12 should be included in Part I where it belongs.

To recapitulate then, I am in favour of enactment of the Fulton-Favreau Formula now as the best means to bring the Constitution of Canada home. I am not opposed to considerable change in the substance of the Formula either now or later, as I have indicated, provided the necessary unanimous consent can be obtained now or later. Nevertheless, there is no prejudice to anyone in using the Formula as it stands as the means to bring the Constitution home. This is clearly the best way, but it is not perhaps the only way in theory. Theoretically the device of a special constituent assembly could be used to bring the Constitution home, and this will now be briefly examined.

A constituent assembly, as I understand it, would be an extraordinary representative body set up by the Constitution and itself authorized to change the Constitution by meeting prescribed conditions as to procedure and voting. Those who advocate such an assembly usually have in mind re-writing the Constitution of Canada in a major way. No doubt such a body could in theory be instituted for Canada if it were authorized by a statute of the British Parliament passed in response to a joint address of the Parliament of Canada in which all the provinces had concurred. This would be the only legitimate or constitutional way such an extraordinary body could be set up in Canada. If this were to be done, there would

have to be prior federal-provincial agreement on a wide range of things. A number of questions would have to be answered about membership of the proposed constituent assembly, about how it was to proceed and what it could do. The following list of questions is suggestive.

Who would select and accredit delegates?

Who would instruct delegates—what discretion would they have?

What kind of a majority would be required to pass or adopt a proposed new constitutional clause at the assembly?

Who would be bound by the passing of a clause in the assembly sessions?

What ratifications, if any, would be required for clauses passed in the assembly sessions?

Would a dissenting minority be bound by majority votes or majority ratifications?

Simply listing these problems means to me that a constituent assembly is simply not a practical possibility at this time. Nor would it be desirable if it were practical. We do not need a major re-writing of the Canadian Constitution at all. The existing Constitution, as developed by judicial precedent and official practice, has served Canadians well for one hundred years and does not need wholesale change to continue to serve us well. On the other hand we must always be ready to study the need for certain particular changes by amendment here and there to meet the needs of new conditions. If a proper case for such change can be made in some specific respect, then we should give that change effect through the operation of a permanent and completely Canadian amending procedure like the Fulton-Favreau Formula—a procedure that arises naturally out of our history and traditions, and which uses our existing legislative and executive institutions of government. Public debate and discussion can take place in legislative and parliamentary sessions, before parliamentary committees, and in other ways congenial to our great inheritance of English parliamentary institutions and responsible government. There are for instance many types of conferences that could be held on constitutional issues. *These would not of course be constituent assemblies*, but rather gatherings designed to inform, to educate, to advise or to make recommendations. They would be concerned with helping to form public opinion and to reach significant consensus among officials and citizens about specific items of desirable constitutional change. I agree with what the Prime Minister of Ontario, the Honourable Mr. Robarts, said recently on this subject in a public address to a group of businessmen in Montreal.¹⁶

It also is time in our country that we sat down and examined, apart from the fiscal problems which have dominated discussions in recent years, some of the constitutional difficulties that arise from time to time. I have suggested a series of conferences at which we could meet together to discover and discuss areas of agreement and disagreement, of accommodation and of compromise, province to province. We would discuss not only constitutional questions but would explore the cultural and social problems of our changing world. I believe that much can be done to relieve the stresses and strains which have affected Canada without necessarily changing the

British North America Act. If it is found that some sections should be changed, then let us change them; where no change is either desirable or necessary, let us leave it unaltered. I see no need for a new Constitution, only the possibility of some adjustments to a Constitution that can readily be amended to serve us well in the future.

I believe this pragmatic approach is the right one, and indeed the only practical one. This is the way to maintain a proper balance between constitutional stability and constitutional change, taking due account of the need for central power on the one hand and provincial autonomy on the other. So far as these adjustments call for specific constitutional amendments we should be able to look to purely Canadian procedures appropriate for the purpose.

Footnotes

¹(1965) Queen's Printer, Ottawa, hereinafter cited as the White Paper. The full text of the Fulton-Favreau Bill or Formula is given in Appendix 3 starting at page 110.

²Hans Kelsen, *General Theory of Law and State*, (1949), Chapter X.

³Sir W. Ivor Jennings, *The Law and the Constitution*, 5th edition (1959), p. 33.

⁴Sections 1 and 2 of the Fulton-Favreau Formula.

⁵Sections 1, 5 and 6(g) of the Fulton-Favreau Formula.

⁶Section 7 of the Fulton-Favreau Formula.

⁷The White Paper, chapters II & III.

⁸Not all these arguments are convincing. For example, Section 2 of the Formula says that "No law . . . affecting any provision of the Constitution of Canada relating to . . . the powers of a legislature of a province to make laws . . . shall come into force unless it is concurred in by the legislatures of all the provinces." It has been argued that this means provincial legislative powers cannot be reduced without the unanimous concurrence of the provincial legislatures with the statute of Parliament concerned, whereas if provincial powers were being increased (and *ipso facto* federal powers reduced) this could be done by the concurrence with Parliament of the legislatures of only two-thirds of the provinces having at least fifty per cent of the country's population. The key word here is 'affecting', and I can see no reason for restricting the meaning of 'affecting' to 'reducing'. The natural meaning of the word 'affecting' is 'making any change'. The corresponding word in the official French version is 'touchant', and the same comment applies. Personally I think the Formula is clear to the effect that, whether one is increasing federal legislative powers at the expense of the provinces, or increasing provincial legislative powers at the expense of the federal authority, there is only one way to do it. The rule of unanimity in Section 2 of the Formula must be followed. Either way you are 'affecting' provincial legislative powers. In any event, there may be re-arrangement of powers between the federal and provincial governments that could not easily be classified as increases for one or reductions for the other.

⁹See the White Paper, Appendix 1, starting at page 54 for 'A Consolidation of the *British North America Acts*, 1867 to 1964.'

¹⁰22 George V, Chapter 4 (U.K.).

¹¹The White Paper, pp. 15-16.

¹²The White Paper, p. 13, items (8) and (9).

¹³See footnote 9.

¹⁴The *B.N.A. Act*, 1952, R.S.C. 1952, c.304.

¹⁵The White Paper, p. 25.

¹⁶"Remarks by The Honourable John Robarts, Prime Minister of Ontario, to the Advertising And Sales Executives' Club of Montreal, Montreal, Wednesday, November 23rd, 1966." (Mimeographed text as released by the Office of the Prime Minister of Ontario).

A Supreme Court
in a Bicultural Society:
The Future Role of
The Canadian Supreme Court

Professor Edward McWhinney

June, 1965

The function of our Supreme Court, a body appointed by the federal government, has come in for attack as to its impartial role in disputes between the provinces and the federal government. What kind of role should the Supreme Court play in a federal country? Professor McWhinney suggests an outline for reconstructing the Supreme Court of Canada based on an analysis of the functioning of continental European final appellate tribunals and on the experience of the Canadian Supreme Court in the 1950's and early 1960's.

A Supreme Court in a Bicultural Society: The Future Role of The Canadian Supreme Court

I

It may be theoretically possible to have a federal constitutional system without a federal supreme court that serves, in effect (in the American constitutional phrase), as "umpire of the federal system". Certainly, Imperial Germany might be considered as meeting such a test, considered purely in terms of the positive law as written in the constitutional text of 1871; though granted the fact of Prussia's undoubted political hegemony, it may be doubted whether Imperial Germany ever really amounted to a federal constitutional system, viewed as a matter of law-in-action. What can be said is that the classical federal societies—the United States, Canada, Australia, and more recently India—where federalism has really flourished for any period of time, have all been characterized by strong final appellate tribunals, staffed by dominant judicial personalities, who have managed successfully to assert the power to review, and ultimately, if need be, to control the decisions and determinations of the co-ordinate, executive and legislative arms of government.¹

This power successfully asserted by the final appellate tribunals—what is called judicial review of the constitutionality of executive or legislative decrees or statutes, or of the practical administration and application of those same Acts—has had rather different historical origins in the case of all the classical federal societies. In practice, this power of judicial review may have amounted to very much the same thing in all the classical federal societies.

In the case of the classical European federal systems—Switzerland, for example—the provision for a federal court, as written into the Swiss Constitution of 1874, authorizes a judicial maintaining of the supremacy of the federal constitution *vis-à-vis* the local (cantonal) authorities; and it also looks to a judicial safeguarding of the uniform application of federal law in the cantonal courts. But the federal court's further function of safeguarding the constitutional rights of individuals is limited, in its practical exercise, by the legally unassailable position which the Constitution of 1874 has assigned to the federal legislature; for no federal law can be tested by the federal court for its constitutionality. In this sense, the Swiss Constitution of 1874 conforms to more basic continental European constitutional attitudes which would consider permitting an indirectly elected or appointive body like the federal court (whose members are in fact elected by the lower house of the federal legislature) to pass on or

to review laws enacted by the popularly elected representatives as counter to the democratic principle.

On the other hand, the West German (Bonn) Constitution of 1949, in defining the jurisdiction of the Federal Constitutional Court in terms sufficiently comprehensive to cover the court's passing on the constitutionality of federal, as well as of local (Länder) laws, departs significantly from long-accepted continental European patterns. Though there are some historical precursors for the Federal Constitutional Court's extensive powers, as conferred under the Bonn Constitution, in the special constitutional role of the courts under the Weimar Republic in the era between the end of World War I and the Nazi accession to power in 1933, the new ground broken in West Germany in terms of constitutional jurisdiction of the courts seems attributable in principal measure to a conscious borrowing, post-war, from American experience as an ideal model of democratic constitutionalism.

I think that the contemporary legal scientist, in the light of this generally acknowledged successful experience with judicial review, under a wide variety of conditions in widely differing societies, might well conclude that judicial review of the constitution, as exercised through a federal supreme court, is both a highly desirable, and also a necessary and inevitable, feature of any federal constitutional system of the classical variety, such as we have in Canada. For our present purposes we can at least say that some sort of arbitral, umpiring role seems inevitable in any federal system that wishes to remain viable in terms of territorial dispersal and decentralization of community policy-making. And we may, I think, confidently assert that the arguments in favour of a Court, of some sort or other, to exercise this special role, are very persuasive, especially in the light of the historically ambiguous continental European experience with nominee, or else indirectly elected, federal upper houses, as purported guardians of "States' Rights"; and in the light also of the generally rather unsatisfactory performance of continental European non-judicial bodies—special constitutional committees of legislative bodies—as safeguarders of constitutionalism and constitutional rights generally, after World War II.

II

Granted the special competence of federal supreme courts as umpires of the federal constitution, the fact remains that in the classical federal systems they have varied widely in composition and tenure, internal organization and work habits, and in basic jurisdiction. For these purposes, we may make a sharp demarcation between the continental European federal court and what may be called the Anglo-Saxon stereotype, as existing generally in the United States and in the Commonwealth countries. Elsewhere, in seeking to describe and delineate the essential character and work of the Federal Constitutional Court of West Germany, I identified three main elements of continental European final appellate tribunals that seem to differentiate and distinguish them from the Anglo-

Saxon models—collegiality, anonymity, specialization². The continental European court is collegial in the sense that it functions in terms of special chambers or *bancs* which sit as a whole, and which decide as a whole and release their final decision in terms of a single opinion, even though that decision may be attained only by majority vote of the judges. The emphasis is on collective deliberation and collective decision-making, with collective responsibility in the final result. The only remotely proximate Anglo-Saxon analogue to this is, of course, the Privy Council, which also functioned collectively and which always rendered its judgment as a whole, even in the exceptional cases where, as a happy consequence of *ex post facto* judicial indiscretions in the years after the decision was given, a final result may have been attained only by majority, and even by a bare majority of one. It is of interest, in a Canadian context, to note that a proposal made in 1953 by the distinguished French-speaking jurist who was then Chief Justice of Canada (Chief Justice Rinfret), that the Canadian Supreme Court should “follow the Privy Council practice” and issue only a single *per curiam* opinion in each case, attracted little or no support, in either French-speaking or English-speaking Canada, and lapsed rather ignominiously. The proliferation of opinion-writing, both dissenting and concurring, continues unabated on the Supreme Court of Canada; and in some respects—the absence, in particular, of an official Opinion of the Court representing the lowest common denominator of majority opinions—the judicial disunity or simple lack of group cohesion is even more marked than in the case of the United States Supreme Court.

As a second point, the continental European court is anonymous. This means that the single, collective, opinion remains unsigned by its main judicial author or authors, in differentiation even from the Privy Council; that there is no public record of dissents or disagreements or even qualifications to the seeming unanimity and apparent self-evidence of the final published opinion of the court, and it also means that the judges are, in general, strangers to the public. They are normally not identified in political debate; they are able, in principle, to stay aloof from the exigent here-and-now of partisan controversy. Recognizing that since great constitutional cases are also almost always great political *causes célèbres*, continental judges inevitably will be drawn increasingly into the public spotlight as their roster of cases expands, one can foresee a certain Americanization of the continental judicial ways and personality, as a by-product of the continental adoption or extension of the American institution of judicial review. This is already, I think, noticeable in the case of the West German Federal Constitutional Court whose judges have become, after some major political cases of recent years, the subjects of learned newspaper editorials and even of extended judicial “profiles” in the weekly reviews. It is not necessarily harmful, provided that the judges do not hesitate to canvass openly, in the court opinions, the policy bases of the court’s decision in the instant case, so that the decision and its policy bases can be submitted to the democratic correc-

tive of public discussion and criticism. It is possible that the increasing focus of public attention on the court and its official policies may lead eventually to some break in the monolithic image of a collegial body united as one behind any single decision of the court: wise judicial policy in great political *causes célèbres* seems to require wide canvassing of the various alternatives in any situation, and this seems to point inevitably to the practical merits of permitting public announcement of the court's vote and also publication, within reason, of the grounds for any minority position or positions within the court.

As a third point, the continental European court is a specialized tribunal, specialized both in terms of its jurisdiction and also in terms of its judiciary. Most Canadian lawyers should be familiar with the tripartite nature of final appellate court organization in France—the *Cour de Cassation*, the *Conseil d'Etat*, and the *Tribunal des Conflits*—with even a fourth, perhaps more appropriately styled quasi-judicial, in the form of the *Conseil Constitutionnel* established in the fifth Republican Constitution of 1958. It may come as a greater surprise to learn that there are no less than six distinct and separate final appellate tribunals actively functioning in West Germany, specialized respectively in terms of the Civil Law (including Criminal Law), Administrative Law, Finance Law, Labour Law, Social Law, and Constitutional Law; with a further provision, under the Bonn Constitution of 1949, which so far has not been acted upon, for creation of still another Supreme Court, an *Oberstes Bundesgericht*, charged with the duty of preserving the unity of the law of the Federal Republic. This degree of court specialization is accentuated still further, if it be remembered that a number of these West German final appellate tribunals are multi-chamber tribunals, with their internal sections still further specialized in terms of subject matter. Yet it cannot be said that deference to judicial expertise in continental Europe (as manifested especially in the number of Supreme Courts that are specialized in terms of subject matter) has produced any especial confusion or overlapping of jurisdiction between the different courts, or any consequent inconvenience to the general public. Indeed, judging by the experience of both France and West Germany, it seems that the general public prefers the relative speed, clarity, simplicity, and relative financial cheapness, of procedures in the newer public law jurisdictions to the cumbersomeness, delays and expense of the older or regular, basically civil law, jurisdictions. And it must never be forgotten in the English-speaking, Common Law world that the United States Supreme Court, since the practical reforms effected by the *Judiciary Act* of 1925, with the extensive discretionary control over its own jurisdiction that the Act gave the court itself, has been to all intents and purposes converted, as a matter of law-in-action, into a specialist public law, indeed constitutional law, tribunal—a fact that is amply reflected in practice as to presidential nomination of judges to the court, with the markedly increased emphasis on “men of affairs”

who are experienced in handling large policy issues, instead of more narrowly technical lawyers.

It would be a mistake in Canada to have too rigid or too static a view of the jurisdiction and basic structure and internal organization of the Supreme Court of Canada. In the practical workings and operation of the Court as presently constituted, there seems to be much that could be rationalized, or improved on, in significant ways. The Court suffers, I think, from its lack of specialization, and of specialist expertise among its members. The successive retirements of Mr. Justice Kellock and Mr. Justice Rand left a significant gap in the Court's ranks of constitutional jurists of whatever philosophy, that has not yet been adequately filled. And since the departure of Chief Justice Duff, the Court has probably not had a good Conflicts of Laws man: the extraordinary failure in Canada to develop a sophisticated body of interprovincial, or federal, Conflicts-of-Laws rules to enable the resolution and accommodation of competing decisions or statutes from the different provinces, and to enable the harmonization of the law of the Common Law provinces with the Civil Law of the province of Quebec, becomes understandable, if not excusable, in these circumstances. As for the private law one may sympathize with the complaint of our French-speaking colleagues that the Court, as at present constituted under the *Supreme Court Act* of 1949—with only three of its nine judges coming from Quebec, and with one of these three, (Mr. Justice Abbott), being an Anglo-Saxon in his ethnic and cultural background, even if a Civilian by legal training—is hardly equipped to do justice to the interpretation of the Quebec Civil Code in appeals from Quebec Courts.

This emphasis on the numerical composition of voting majorities on the Court, and the underlying political significance solidifying, in statutory form, the principle of regional representation on the Court, is a recognition of the cultural aspect of laws and legal codes in general. It is true that there have been a few politically unfortunate incidents resulting from decisions rendered by the Supreme Court of Canada on the Quebec Civil Code, where the Common Law judges have in fact imposed the final judgment by sheer weight of numbers upon their Civil Law brethren, who have thereby been left to the scarcely adequate satisfaction of filing dissenting opinions. For *gaucheries* such as these committed by Common Law majorities, there may be little or no excuse. Nevertheless it seems only fair to say that such occasions, in private law cases, have not been frequent over the years; that they have (fortunately) generally appeared not to have worked any substantive injustice in their results; and that such occasions appear hardly to have arisen at all since the Supreme Court of Canada became a final appellate tribunal in its own right, with the abolition of the appeal from Canadian Courts to the Privy Council in 1949. One further comment which seems not inapposite is that the Quebec judges on the Court have hardly, in modern times, been in the tradition of the earlier great Civilian jurists. If the full intellectual richness of the Civil Law and its inherent capacity

for growth and progressive expansion to meet changing social conditions, is hardly captured in the contemporary decisions of the Supreme Court of Canada on the Quebec Civil Code, then the fault seems as much, if not more, that of the Quebec Civil Law judges on the Court, as of the Common Law majority. Whatever else they may have been in the development of Canadian jurisprudence, certainly the Quebec judges have not been, in recent years, distinctive spokesmen or champions of the Quebec Civil Code. Perhaps the fairest comment would be that in an era where claims of legal expertise depend so much on legal specialization, three judges are hardly enough to ensure that at any one period there will be at least one or two great Civilians on the Court.

On all these considerations, the claims for strengthening the quality of Canadian jurisprudence on the Civil Law seem incontestable. While a case could be made for following, in Canada, the American patterns of jurisdiction of leaving all private law matters to the various states' Supreme Courts as final appellate tribunals—which would mean, in regard to the Quebec Civil Code, making the decisions of the Quebec judicial hierarchy final and unreviewable by the Supreme Court of Canada—I am not at all convinced that such a course is either necessary or desirable. The same result could be achieved as easily, and with far less disturbance of existing court machinery, by accepting the principle of specialist chambers within the Supreme Court of Canada, with among these, certainly, a specialist Civil Law chamber with jurisdiction over the Quebec Civil Code (so far as constitutional civil rights issues be not involved). I take it that the numbers of judges on the Supreme Court of Canada might need to be increased to allow for the efficient operation of a plural chamber system within the court; and if the membership of the Civil Law chamber should, in this way, be drawn from a panel of five to seven, or even nine, judges then I should hope that, following French practice between the *Cour de Cassation* and the *Conseil d'Etat*, at least one member of the Civil Law panel would be a Common Lawyer to maintain opportunities for cross-fertilization between the two legal systems. I take it that with a plural chamber system within the framework of the one court, there would be some intellectual give-and-take and exchange of ideas between the different chambers and consequently in the specialized branches of law for which they should have competence.

If the idea of jurisdictional specialization within the Supreme Court of Canada be accepted in regard to the Quebec Civil Code, then there is no good reason, in principle, why it could not be extended to other branches of law, for example the Common Law and Constitutional Law. There should be no especial problems in regard to creation and composition of any specialist Common Law Chamber. There might be some questions, however, in regard to the matter of voting rights within any specialist Constitutional Law Chamber.

III

The main burden of the current Quebec complaints concerning the Supreme Court of Canada, as at present constituted, seems really to be directed at the Supreme Court's record of constitutional law decisions in cases originally arising from Quebec—what we, in the Common Law provinces, have, perhaps inelegantly, been accustomed to categorize as the "great civil liberties decisions of the 1950's". Certainly, if one looks at the actual judicial voting records in those constitutional cases of the 1950's, one finds, in general, the court decisively split between its Common Law judges and its French-speaking, Civil Law judges.

The voting splits in these cases should not be overstated or exaggerated. An occasional Common Law judge of high technical legal skills will join the French-speaking judges in dissenting from the Common Law majority in certain cases. And not infrequently the politically decisive majority opinion, among the Common Law judges, will be a consciously modest, fact-oriented opinion, which seems intended to narrow the elements of division and conflict between the Civil Law and the Common Law judges, and which, in any case, avoids basing its final holding on high, and necessarily (in ethnic-cultural terms) controversial issues of policy in public law.

Yet, by and large, the Court has split along ethnic-cultural lines in this group of constitutional *causes célèbres*, and the ethnic-cultural nature of the division is accentuated if we note that one of the three Quebec judges, Mr. Justice Abbott, though a Civil Lawyer by training, inevitably sides with his Common Law, Anglo-Saxon, judicial brethren in these cases. That the split has not been healed with the changes in judicial personnel on the Court in the years since the last of these great constitutional decisions in 1959—the changes in judges in particular, consequent on the retirement of Justices Rand and Kellock, the two most libertarian-activist of the English-speaking judges of modern times, and consequent also on the death of Chief Justice Kerwin—seems amply indicated by the judicial voting line-up in the "Lady Chatterly's Lover" case in 1962, where, once again, the Court split decisively along general ethnic-cultural lines, with the two French-speaking judges' opinions being notable for their condemnation of the interest in free speech and free literary expression which was necessarily advanced or favoured in the majority of the judicial opinions.

If the Common Law judges and the Civil Law judges represented in these cases are to be considered as in any sense representative of their different ethnic-cultural traditions with their distinctive value systems and preferences, it is evident that we have two quite separate, and in many important respects conflicting *Weltanschauungen* operating in Canada at the present day. For the Common Law judges, responding to the Open Society values of an essentially commercial, expanding, industrial civilization, have viewed the interventions on the part of the Quebec Government or of Quebec municipal or of other public author-

ities in the great public law cases of the 1950's, as unwarranted and intolerable infringements on the fundamental liberties of the citizen, of the sort that no liberal democratic society can afford to tolerate. On the other hand, the Quebec judges, responding to a society which the Tremblay Report identifies as having a special commitment to the "sense of order", in priority, or hierarchical superiority, to the "sense of liberty" and the "sense of progress", have tended to regard these cases as either not raising civil liberties issues at all, or else, if they do concern civil liberties, to concern, more basically, a civil liberty of the Quebec population not to be exposed to the aggressive proselytizing activities of the Jehovah's Witnesses or to the potentially corrupting influences of *avant-garde* literature or of radical political ideas. The semantic play in posing the issues that divide the French-speaking and the English-speaking judges, directs attention to the fact that in a clear contest between interests in speech and communication on the one hand and interests in order on the other, the French-speaking judges on the Court have come down unmistakably on the side of the interests in order and the English-speaking judges on the side of the speech and communication interests.

IV

No amount of learned discussion of the need for changes within the Supreme Court of Canada, or of learned reference to continental European or other experience, should be allowed to obscure the question whether what is being contended for is a simple structural change within the Court, intended to improve its technical efficiency of working operation; or whether the proposals are designed, really, to make a fundamental change in effective political power as to determination of basic constitutional values within the country. In the latter case, the proposals for change may well prove to be politically unacceptable to a majority of the country.

It is one thing to propose a specialist, Civil Law-composed chamber of the Supreme Court of Canada with final powers to dispose of private law cases arising under the Quebec Civil Code. But should the jurisdiction of any such specialist, Civil-Law-composed chamber necessarily include also public law cases arising interstitially to the Quebec Civil Code, as did the *Roncarelli* case in 1959? Again it is one thing to argue the case, on the model of the West German Federal Constitutional Court, for a specialist constitutional law chamber of the Supreme Court of Canada, or even for an entirely separate and autonomous constitutional Supreme Court; but surely it is no necessary element of any such specialization to provide for equal representation on the Court, in terms of judges and of judicial voting rights, of both French-speaking and English-speaking Canada, as some Quebec lawyers now contend.

Arguments for changes in the political balance of power presently existing within Canada, should be presented and argued frankly and openly. The fundamental issue for English-speaking Canada, if the

debate be focussed on the public law cases of the 1950's and on an asserted long-standing grievance of Quebec over the Common Law majority-imposed decisions in those cases, may be whether one can have two radically different conceptions of constitutionalism and constitutional liberties operating within a single country and still have a viable federal system. The answer, until very recent years, when one had focussed predominantly on essentially municipal law problems, such as the possible modes of institutionally effecting any re-united Germany of the future, granted the existence today of a West Germany and an East Germany operating officially from quite opposing philosophical premises, had tended to be in the negative. Now, after some greater experience, in the International Law arena, in the practical possibilities for minimum accommodation of contending political and social systems—as reflected, happily, in the working Soviet-Western *détente* of the last several years—one tends to be far less pessimistic about the long-range opportunities, for fundamental reconciliation and alliance between different or even opposing value systems. The prime lesson, from these international arenas, is that co-existence may be both politically practicable, and also reciprocally beneficial and useful, granted a sufficiency of good-will and common sense on both sides.

A fundamental issue today for French-speaking Canada may be, however, whether the ideals of Quebec's great intellectual and spiritual revolution of the last few years are really compatible with governmental and official practices of the type manifested in the great public law cases arising from Quebec during the 1950's, at the height of Premier Duplessis' power—that is to say, an apparent official licensing of a systematic police harassment of an unpopular minority sect like the Jehovah's Witnesses. The conservative and orderly—at times seemingly reactionary—face that Quebec has in the past presented to the rest of Canada may be something that Quebec jurists themselves have a special responsibility for altering, if the best ideals of the Quiet Revolution are really to be achieved and realized in practical governmental and constitutional form.

Footnotes

¹As to federal constitutionalism, and the role of Supreme Courts, see generally *Studies in Federalism* (Robert R. Bowie and Carl J. Friedrich, Editors, 1954). And see also my studies, *Comparative Federalism, States Rights' and National Power* (1st ed., 1962; 2nd ed., 1965); *Judicial Review in the English-Speaking World* (1st ed., 1956; 3rd ed., 1965).

²As to judicial review in West Germany, see generally my study, *Constitutionalism in Germany and the Federal Constitutional Court* (1962).

The Provinces and International Agreements

Mr. Justice Bora Laskin

Mr. Justice Laskin was a Professor of Law at the University of Toronto when appointed to the Ontario Advisory Committee on Confederation on its formation in February, 1965. He resigned his position on his appointment to the Ontario Court of Appeal.

Spring, 1965

The renewed interest on the part of certain provinces, particularly Quebec, in playing a greater role in international affairs led the Committee to investigate more deeply provincial responsibility in this field. Sustained public interest in this topic occasioned two subsequent papers on the same general topic. The purpose of Mr. Justice Laskin's paper is to establish on a legal basis the answers to three important questions:

Do the provincial governments have any right to make agreements, treaties, and conventions with foreign powers?

In what way (if any) is the federal government restricted in making agreements with foreign powers in areas of provincial legislative jurisdiction?

Are provincial agents-general and provincial discussions and arrangements with foreign governments illegal?

The Provinces and International Agreements

I

The distribution of governmental powers in a federal state cannot be complete without reference in its Constitution to foreign affairs. Normally, the exercise of authority in relation to foreign affairs has two aspects: first, there is the *executive power* of direct dealing with foreign states, involving an internal determination of where that executive power resides and an external determination of international status or personality; and, second, there is the *legislative power* of implementing domestically, if need be, the international accord, a matter which in itself has no international significance save as it is expressly dealt with in the international contract. The legislative power of implementation raises, however, an internal domestic issue which, shortly stated, is whether a federal state must be governed in its international relationships by the distributive character of its constitutional organization. Ordinarily, it would be expected that this issue (as, indeed, the question of executive power to engage in international relations) would be settled by the basic Constitution or, if not clearly settled thereby, would be resolved by the decisions of the highest court competent to bind the central and unit governments of the federation by its judgments.

In considering how these matters stand in Canada, two long-established constitutional doctrines provide a relevant background. First, the distribution of legislative power between Parliament and the provincial legislatures involves a correlative distribution of the accompanying executive or prerogative power. (The formal exercise of these executive or prerogative powers at the federal level by the Queen or by the Governor-General, and at the provincial level by the Lieutenant-Governor in the name of the Queen, must, of course, be seen practically in the context of the conventions of responsible government.) Second, the *British North America Act* exhausts the whole range of legislative power (or, the totality of effective legislative power, to use a more recent judicial exposition of the principle) and, subject to express or implied limitations in the Act, whatever is not given to the provincial legislatures rests with Parliament. (On the question of limitations, see Laskin, *Canadian Constitutional Law*, 3rd ed., pp. 70 ff.). The application of these doctrines to foreign affairs in general, or to international agreements in particular, means that the executive power in relation thereto is a concomitant of the legislative power; and that unless it is unqualifiedly found in the catalogue of provincial legislative powers, the matter is within exclusive

federal competence. Is this in fact the case under the Constitution and the judicial decisions which have dealt with foreign affairs and international agreements?

II

British colonial history and law show clearly that a grant of legislative power to implement domestically the obligations undertaken in international negotiations is not necessarily a concession of international status. Thus, from the standpoint of Great Britain's exclusive representation of her colonies abroad, there was nothing incongruous in granting power to a colonial legislature to carry into effect by local legislation the international commitments made by Great Britain on behalf of the local colonial government. Recognition of international personality or status would, however, be involved if a colony were given the power of negotiating international agreements without reference to Great Britain (that is, to the British Government).

The Canadian Constitution, unlike the later Australian one, makes no reference to foreign or external affairs. They are touched upon only in the now obsolete Section 132 which reads as follows: "The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any Province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries." The Section is obsolete because Great Britain (or to use the formal name, the Crown in right of the United Kingdom) no longer makes treaties or any other kind of international agreement for Canada or any Province thereof, and it is unreal to expect the Courts to apply Section 132 in the present circumstance of Canada's undoubted independent international status; the language of the Section is beyond any such redemption. It is important, however, to notice the reference in the Section to the provinces. It underlined that at a time when the central government of Canada had no executive power to conduct foreign relations for itself or any of the units, the British Government might do so, but whether it was Canada as a whole or any province that was affected, the necessary legislative and executive powers to discharge the obligation rested with the central authorities in Canada. For this purpose, it was immaterial that the obligations involved matters that would otherwise have been within exclusive provincial legislative (and executive) competence. So-called "treaty" legislation under Section 132 could be enacted only by the Parliament of Canada.

If the provinces by 1867 and later had no executive power in relation to foreign affairs, and no legislative power either, did they acquire either the one or the other when, in the course of political evolution, Canada as such attained independent international status? As of 1867 and later, Canadian subservience abroad involved under the Constitution federal or Dominion dominance at home. Would then independence abroad mean subservience at home, that is in the sense of loss of com-

plete legislative power to implement domestically international obligations? International agreements involving matters that were in any event within Parliament's competence did not raise any issue. The only questions, at least in a legal sense, were whether the central government could exercise the executive power of dealing internationally with matters which were domestically within exclusive provincial competence, and whether the central Parliament could legislate on those matters so far as necessary to carry out international obligations.

III

The *British North America Act* limits provincial legislative power territorially; a provincial legislature must confine its valid enactments to operation within the boundaries of the province. Prior to 1931 there were judicial pronouncements that the Parliament of Canada as well had no power to legislate extraterritorially but, whether or not these were correct, Section 3 of the *Statute of Westminster*, 1931 was express in authorizing Parliament to enact extraterritorial legislation. There is no parallel provision with respect to the provincial legislatures.

This does not mean, however, that the province in its character as a juridical person (whether acting in a formal way as the Crown in right of the province, or through the Lieutenant-Governor or through an authorized Minister) is unable to make agreements with persons or private agencies in another province or in another country. (Whether or not such agreements involve implementing legislation commanding action or limiting action of the inhabitants of the province may be put to one side for the moment). Nor does the want of provincial extraterritorial legislative power mean that independent (although government-launched) agencies are unable to negotiate across provincial or international boundaries. They are in no different position from ordinary residents of the province in this respect. In other words, private persons or non-governmental agencies may treat with governments, here or abroad, without thereby raising any immediate external affairs problem. It is unnecessary for the purposes of this paper, to go into such allied questions as whether the private person or agency may, under the law of his or its country, engage in transactions abroad, or whether in case of any wrongdoing or injury in the course of an international transaction there may be intergovernmental consequences or repercussions.

A totally different situation exists, however, where the province as such, or the Crown in right of the province, negotiates across provincial or international boundaries with another province or state or the government thereof, because here the question at once arises whether this is an assertion of power in relation to external affairs.

It is necessary to distinguish here dealings between provincial governments and dealings between a provincial government and a foreign state or a governmental unit thereof. Relations between provincial governments do not involve any issue of international law or international relations. Although there is nothing in the Canadian Constitution that

expressly permits interprovincial agreements there is, equally, no prohibition and, indeed, nothing that suggests any prohibition. By contrast, Article 1, Section 10, Clause 3, of the Constitution of the United States is express that "no State shall, without the consent of Congress . . . enter into any agreement or compact with another State or with a foreign Power . . .". Without enlarging on the situation in the United States, it is enough to say that consent of Congress is not required in such minor matters as adjustment of boundaries, but on important matters such as flood control, allocation of water resources and control of crime (on which there are interstate compacts) such consent is admittedly necessary.

The reference to the position in the United States is important to point to a deficiency in the Canadian Constitution in its failure to prescribe any judicial forum for the determination of litigable issues between the provinces. Provisions of this kind exist not only in the United States under Article III, Section 2 of its Constitution (reposing jurisdiction in the Supreme Court) but also in Australia under Section 75(iv) of its Constitution (reposing jurisdiction in its High Court). In Canada, there is statutory provision in the *Exchequer Court Act* for that Court to hear disputes between provinces with their consent. Presumably, in a contract action at least, one province might sue another in the latter's courts but legislation of the latter province would have a telling effect on such suits. This enforcement problem as between provinces is, however, peripheral to the main concern of this paper. On the substantive side, it is sufficient to say that the provinces are quite free, independent of the federal executive or Parliament, to enter into agreements with each other and to implement those agreements, if necessary, within their respective boundaries, so far as the agreements deal with matters within provincial legislative jurisdiction or deal with property of the particular provinces.

Where a province seeks to deal with a foreign state or with a unit thereof (if the foreign state is a federation), a different situation exists. As a matter of internal constitutional law, there is the question whether the province may, so to speak, reach out to deal with a foreign government. The Canadian Constitution is silent on the matter, but it is an obvious inquiry whether the admitted prohibition against provincial extraterritorial legislative power means a correlative prohibition against provincial extraterritorial executive power. To refer again, comparatively, to the United States, Article I, Section 10, Clause 1, of the Constitution says flatly that "no State shall enter into any treaty, alliance or confederation". This provision, taken in conjunction with the affirmative grant of treaty-making power in Article II, Section 2, Clause 2, to the national government, and in conjunction with the already quoted Article I, Section 10, Clause 3, respecting compacts with foreign states, and also in conjunction with the supremacy Clause 2 of Article VI ("treaties . . . shall be the supreme law of the land") makes the ascendancy and exclusive foreign relations authority of the national government of the United States clear.

The issue of provincial extraterritorial executive power is compounded in difficulty by the situation which presently exists, under the governing judicial decisions, with respect to federal or Dominion executive and legislative power in respect of foreign affairs and international obligations. The matter must also be viewed from the standpoint of international law and the enforceability of obligations of an international character. In sorting out the problems that arise here it is well to begin by pointing out that for the purposes of international law there is no difference between a treaty, an international convention or international agreement. The formalities attending the assumption of an international obligation do not as such affect its international validity or enforceability. In my submission the situation is the same in Canadian constitutional law so far as concerns both internal executive power and internal legislative power; neither of these aspects of involvement in foreign affairs undergoes any change by reason of the fact that a treaty in its formal connotation is in contemplation, as opposed to a convention or any other type of intergovernmental agreement. I shall expand on this matter below.

IV

As part of Canada's British inheritance, the conduct of foreign affairs and the acceptance of international obligations have been regarded as matters for the executive (for the Cabinet, to refer to the political authority). True enough, the Cabinet is answerable to Parliament, but the latter has not generally imposed controls in advance to govern the manner and extent to which the Cabinet may embroil the country in international affairs. Undoubtedly, it may do so if it chooses. Another aspect of the British inheritance (exhibiting in this respect a difference from the United States) is that Canadian law does not recognize the self-executing treaty, an international obligation which by its own force and terms becomes operative as domestic law. Thus, although the executive may bind the country internationally, the international commitment cannot as such become a rule of conduct for citizens without implementing legislation. (International involvements may have side effects on domestic transactions, but a review of these effects is not germane to the points under discussion).

It is, of course, possible to have intergovernmental arrangements which do not either envisage or require domestic implementation by legislation binding the citizen, because no change in the existing domestic law is involved. Thus, Canada and the United States might agree on the use or occupation by United States forces of military installations in Canada, or there might be an agreement on the exchange of scientific data. Such agreements can, as a rule, be carried out by executive or administrative direction alone. The blunt question that now arises is whether the federal executive is limited in any way by internal legal considerations in the range of matters on which it may engage in international negotiations. The question may be looked at in two ways: first, from the standpoint of an international obligation which requires no implementing

legislation, and, second, from the standpoint of an international obligation that does. In this latter connection, it is relevant to note that by international law, a state is under a duty to make or effect such legislative changes as are necessary to carry out its international obligations.

The answer to the question requires another look at the proposition stated at the beginning of this paper; namely, that the distribution of legislative power carries with it a correlative distribution of executive power. It is clear that first, in the colonial period, and later, in the period of Dominion status, and now, in the period of Commonwealth relations, official contact between the British Government and Canada or any part thereof has been and is through the federal government. It alone has presence or status for intra-Commonwealth dealings, as it alone had such status for dealings with Great Britain in earlier periods. This status was an attribute of external recognition, and not really dependent on anything expressed in the *British North America Act*. As such, it was not limited by the scheme of internal distribution of legislative power but reflected, in the sense in which it was concerned with "family foreign affairs", that there was only one channel of communication between Canada and the outside world and that was through the central government. Although not dependent on anything expressed in the Canadian Constitution, it had support in such provisions as those giving to the Governor-General-in-Council the power to appoint the provincial Lieutenant-Governor (Section 58), giving all residuary legislative power to the federal Parliament (Section 91), and limiting independent provincial authority to action within the province (Section 92).

The release by the British Government of legal and political control over Canadian affairs (formalized through Imperial Conferences in 1926 and 1930, and by the *Statute of Westminster*, 1931) invited external recognition of a wider kind and led to acceptance of the national government of Canada as the spokesman for Canada in international affairs, and the only channel of communication between Canada or any part thereof and a foreign state. (Remaining legal fetters, such as the problem of constitutional amendment, do not detract from the validity of what is said insofar as it concerns the Dominion and the provinces *inter se*.) Indeed, the general rule of international law is that only "states" may be subjects thereof, and a corollary of this has been that only one juridical personality can be recognized in a federal state. The exceptional departures from this rule in the cases of Byelorussia and the Ukraine, which became original members of the United Nations although being constituent republics of the Soviet Union, arose out of a constitutional change in 1944 by which each of the sixteen Union Republics was authorized to enter into direct relations with foreign states. The fact that only two republics became United Nations members was the result of a diplomatic compromise. Moreover, the two republics in question have limited their participation in international affairs to membership and activity in international organizations; they do not have ordinary diplomatic relations with foreign states. Although there is nothing in the

Byelorussian and Ukraine example that, in present circumstances, is any precedent for the Canadian provinces, it is clear that the break-through to what has been called "marginal international personality" depended on both internal constitutional change and external recognition by acknowledged independent states.

It is a fact that there are no provisions in the Canadian Constitution (such as are found in the Constitutions of United States, Switzerland and the West German Republic) permitting the provinces to make agreements with foreign states with the consent of the national government. I do not say that the national government may not, in any event, permit them to do so, but the want of power of this kind supports the conclusion that the national executive of Canada is in law free to make any kind of international commitment. Canada as such and it alone is responsible internationally if the commitment is not carried out. If it authorizes a province to engage in international negotiations, as I believe it can, it will still be Canada as such that will be responsible internationally. A foreign state that purported to deal directly with a province without going through the national external affairs department would be, in effect, recognizing it as having international personality; certainly, the foreign state could not claim to hold Canada accountable if there was a default in the concluded agreement. Conversely, if a province were to seek to deal directly with a foreign state, the latter's proper answer would be to refer to the Canadian national authority to ascertain if it agreed and if it would stand behind any agreement that was reached.

If the federal executive is free to act, and act exclusively, in any or all matters, as the Canadian organ of treaty-making or of the making of less formal international agreements, is the federal Parliament equally able to act as fully in implementing domestically the results of its international negotiations? It was empowered to do so under Section 132 of the Constitution when the British Government was the organ for the conduct of Canadian foreign relations, but with the federal executive of Canada now acting as such organ, and Section 132 no longer applicable, the governing rule is presently that laid down by the *Labour Conventions* case in 1937. The principle of that case is (to use the words of the Privy Council which decided it, as Canada's highest court at the time) that "for the purposes of . . . the distribution of legislative powers between the Dominion and the Provinces, there is no such thing as treaty legislation as such. The distribution is based on classes of subjects; and as a treaty deals with a particular class of subjects so will the legislative power of performing it be ascertained." The bifurcation of Canada's implementing power, according to whether the matters covered by a treaty or convention or other agreement are otherwise within federal or provincial legislative power, was seen by the Privy Council as necessary to protect provincial constitutional autonomy, and particularly (the judgment suggests) the exclusive competence of Quebec. In this light it stated that "there is no existing constitutional ground for stretching the

competence of the Dominion Parliament, so that it becomes enlarged to keep pace with the enlarged functions of the Dominion executive . . . the Dominion cannot, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the constitution that gave it birth. . . ."

What the Privy Council's judgment means is that once Section 132 is left behind, neither the federal residuary authority nor the principle of the exhaustiveness of legislative power is adequate (alone or in combination) to spell out an unlimited power to implement international obligations. Indeed, in the *Labour Conventions* case, what were involved were conventions rather than treaties, and it is clear that regardless of the form of the international obligation, or indeed lack of form (it might arise by an exchange of notes), the power of implementation is governed by the ordinary rules of distribution of legislative power between Canada and the provinces. Earlier case law had likewise recognized that no distinction should be drawn, so far as implementation was concerned, according to the form of the international obligation; an intergovernmental convention (it was said in the *Radio* case) came to the same thing as a "treaty" for purposes of Section 132, and the *Labour Conventions* case shows that they involved the same considerations outside of Section 132. Power to implement international promises was not a constitutional value that could be assigned exclusively to the federal Parliament merely because the federal executive was now managing foreign affairs.

In this respect, the situation is different in the United States (where, however, the Constitution is much clearer), and different too in Australia whose Constitution confers power on the Commonwealth Parliament over "external affairs". In both of these federations, by decisions of their highest courts, full implementing power resides in the central legislature, whether or not the matter of the international obligation is one otherwise within the exclusive competence of the states. Notwithstanding this omniscient legal power, both the United States and Australia have been restrained by the centrifugal forces which are present in all federations from pushing their constitutional authority too far. They have also from time to time insisted on inclusion of so-called "federal state" clauses in international agreements to which they are parties, clauses whose purpose generally speaking is to entitle the federation to discharge its international obligation by remitting the agreement for implementation to its constituent states where it deals with matters ordinarily within state competence. It is clear, of course, that Canada, but not the United States or Australia, has ground to put a "legal" face on a request for a federal state clause or on a refusal to participate in multilateral negotiations that envisage agreement on matters that otherwise fall within provincial power.

This is not the place to argue for or against the legal limitation presently operable on Parliament in respect of international agreements. It is supported by so close a student of federalism as Professor K. C.

Wheare, but opposed by retired Justice Rand who asserted that he "cannot agree that it is possible to eliminate treaty character from legislation accomplishing its terms", and that "the totality of treaty-making action . . . (is) a discrete and entire subject matter" whose only place of reception is in the residual power of the Dominion. Eighteen years after the *Labour Conventions* case, Lord Wright who sat on the case as a member of the Privy Council (which at that time gave only a single and ostensibly unanimous opinion) expressed his dissent from the principle there laid down, and in 1956, a year later, the late Chief Justice Kerwin said in the course of his judgment in *Francis v. The Queen* that "it may be necessary . . . to consider in the future the judgment of the Judicial Committee in the *Labour Conventions* case". No clear opportunity has since arisen for any such reconsideration.

V

In the present state of Canadian constitutional law and applicable international law, a province can engage in dealings with a foreign government only through the authority of the national government, and it would in that respect be really a delegate of the national government. The latter is entitled to determine how and by whom it will be represented abroad. For example, in the Columbia River negotiations with the United States, the Canadian Government took the exceptional step of including a representative of the Government of British Columbia in the Canadian delegation. It is thus possible for it to give authority to a completely provincially-chosen delegation. But the international responsibility would be that of Canada not that of the province.

It is my opinion that if a province presently purported on its own initiative to make an enforceable agreement with a foreign state on a matter otherwise within provincial competence, it would either have no international validity, or, if the foreign state chose to recognize it, would amount to a declaration of independence on the one hand, and, on the other, to a denial of the exclusive juridical competence of Canada as such in the field of foreign affairs. It would then be for Canada to assert that competence against both the province and the foreign state. Nor could the province, in my opinion, give such an agreement domestic validity by implementing legislation because (as a matter of internal constitutional law) such legislation would be vulnerable as being action taken under a non-existing power to enter into international commitments. It cannot be the case that because the plenary federal executive power in foreign affairs is not complemented by a plenary implementing power, the result is that the provinces are able to implement when they have no antecedent executive power to act independently in foreign affairs.

The presence abroad of provincial agents-general, in the main in Great Britain, does not undermine this assertion. They are not accredited to any foreign government although they do receive what may be called diplomatic courtesies. Essentially, they are governmental repre-

sentatives promoting the commercial interests of their respective provinces. Any strictly diplomatic issue, involving intergovernmental dealings, is normally referred to the High Commissioner's office. If the office of agent-general were to develop as a diplomatic one, involving accreditation to another government, this would necessitate a re-writing of both Canadian constitutional law and international law if the Canadian federation was to survive in any way closely resembling its present position.

Again, the assertion in question is not belied by the instances in which provinces have engaged in discussions and entered into various arrangements, reciprocal or otherwise, with foreign governments or units or agencies thereof. The Supreme Court of Canada in *Attorney-General for Ontario v. Scott*, decided in 1955, has recognized a distinction between treaties or international agreements and arrangements which do not involve obligation but which envisage reciprocal or concurrent legislative action. One instance is an arrangement between Ontario and Great Britain (as well as with other provinces of Canada) for co-operative enforcement by each within its jurisdiction of maintenance orders issued by the other against deserting husbands. The line is thin between such arrangements and international agreements but the Supreme Court left no doubt that the provinces were competent as to the former but not as to the latter. Even such permissible arrangements require, however, that the federal external affairs department be used as the channel of communication. Other dealings have taken place between provinces and border states of the United States, the latter being authorized by the Congress under the "compact" Clause 3 of Article I, Section 10, of the Constitution. The extent and range of such arrangements (limited, of course, to matters within provincial legislative jurisdiction) may well form the subject of a companion study, and it is enough to say here that, in present circumstances, there can be no international agreement without the participation of and assumption by Canada of international responsibility.

There are legal as well as formal differences in the role that the provinces may play in the kind of arrangements sanctioned by the *Scott* case and in the implementation (under the rule of the *Labour Conventions* case) of international agreements made by Canada. The international agreement provides a basis for domestic action but, subject to a "federal state" clause in the agreement or other alleviation, such action is commanded by international law. If provincial implementing legislation is enacted, any repeal or change could involve Canada in a breach of international obligation. No such consequence would, of course, flow from like action taken in respect of the kind of reciprocal or concurrent (and non-obligatory) arrangements dealt with in the *Scott* case. The situation forces speculation whether the difference in the two kinds of dealings is merely a rationalization of the willingness of the foreign state to forego the legal sanction that ordinarily accompanies an agreement; or, to put the matter in other terms, whether this

is a case of trying to find a means of effective co-operation with a unit of a federal state in a matter of local concern to it without disturbing the formal rules of international law. If so, it must be evident that not only the foreign state but Canada as well is willing to make the compromise.

Treaty-Making Power in Canada

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July, 1966

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Mr. Delisle's paper examines the problem of whether a province, as a constituent member of a federation, can enter into international agreements intended to create legal rights and obligations, or to establish relationships governed by international law. The report attempts to answer this question by looking first at what the writers on international law have said, then by examining the evolution of treaty-making power in Canada as seen in the custom and practice of the past century, and finally by reviewing judicial pronouncements on the subject.

Treaty-Making Power in Canada

Treaty v. Agreement

In the past year strong assertions have emanated from the province of Quebec to the effect that each of the provinces has the power according to the Constitution of Canada to sign international agreements dealing with matters under provincial jurisdiction.

As a first step in analyzing this proposition the writer proposes to eliminate what is, in his opinion, a semantic quibble, the difference between treaty and international agreement. Quebec's former Minister of Education, Paul Gérin-Lajoie, in advocating the existence of the above-noted power, seeks to distinguish international agreements from treaties as follows:

The word treaty is usually reserved to designate the more solemn, almost majestic agreements which are liable to have a direct effect on the political relationship between two states, whereas an agreement is restricted to a more modest purpose without specific bearing on political relations.¹

It is submitted that the following quotations do much to refute the suggestion of a difference in terminology having any significance in International Law.

Professor D. P. O'Connell states:²

A treaty is an agreement between States, governed by International Law as distinct from Municipal Law, the form and manner of which is immaterial to the legal consequences of the Act. . . . The name given to the instrument is immaterial provided the parties have contractual capacity in International Law, and provided their agreement is intended to create rights and obligations, or to establish relationships governed by International Law.

The Harvard Research Institute, in the introductory comment to its Draft Convention on the Law of Treaties,³ has the following to say:

Some international instruments are called "treaties" *eo nomine*, but a whole repertory exists from which names for instruments may be chosen. "Convention", "protocol", "agreement", "arrangement", "declaration", "act", "covenant", "statute"—all of these terms have been employed with reference to international instruments concluded in recent times, and the choice of one rather than another is in most cases, if not in all, without any significance in International Law.

Accordingly, Article 4 of the Draft Convention reads:

The international juridical effect of a treaty is not dependent upon the name given to the instrument.

In the Draft Code on the Law of Treaties of the International Law Commission⁴ Article 2 reads as follows:

Agreements, as defined in Article 1, constitute treaties regardless of their form and designation.

Sir Hersch Lauterpacht, Special Rapporteur, in his comment⁵ on Article 2 states:

The principle laid down in this article is generally recognized. While the terms "treaty", "convention", "agreement" and "exchange of notes" are the most common . . . a great variety of other terms are occasionally also used. . . . The terms used are of no legal consequence, so long as the instrument in question can properly be interpreted as creating legal rights and obligations . . . in most cases there is no apparent reason for the variation in the terms used.

Professor Hudson, in his work on the P.C.I.J. is quoted by Lauterpacht⁶ as saying:

. . . the name chosen for an instrument, frequently due to political or casual consideration, is seldom of juridical significance.

Sir Gerald G. Fitzmaurice says:⁷

The designation is irrelevant.

The writer apologizes for the copious quotations but, considering the acknowledged credentials of the proponent of the distinction, it was believed necessary to use, in reply, the words of equally accredited writers. What is attempted by the above is to illustrate that the adage "A rose by any other name . . ." is quite applicable to the supposed distinction. The term treaty is a generic term with the species of the genus ranging in their titles from Charter to Treaty to Agreement to Arrangement. One of the species, the Treaty, for many conjures up the most formal conclusion of an arrangement between Heads of States; formal exchange and inspection of instruments signifying the grant of full powers, Royal Seals attesting signatures, and so on. The manner and form of concluding arrangements, however, has often little to do with the importance of the relationships, political or economic, thereby created. It is interesting to note, for example, that an intergovernmental agreement was the instrument by which Canada signified her assent to the terms of peace following the Second World War. While the title may reflect its political origin, e.g., whether it was made in the name of the head of state or in the name of a minister of a government department, it has no legal significance in International Law, nor, it is submitted, in Constitutional Law.

Having disposed of the semantic quibble, to the writer's satisfaction at least, it becomes necessary to answer the question whether a province, as a constituent member of a federation, can enter into an international agreement intended to create legal rights and obligations, or to establish relationships, governed by International Law.

It is proposed to answer the question by looking first at what the writers on International Law have said, then to examine the evolution of treaty-making power in Canada as seen in the custom and practice of the past century (at times formulated at Colonial and Imperial Conferences) and finally by a review of judicial pronouncements on the subject.

International Law Opinion

A federal state may divide its treaty-making power between its central

and regional governments or it may vest the whole of it, with or without limitations, in its central government alone. As Lord McNair puts it:⁸

Normally, it is the federal government that exercises the totality of international capacity to conclude treaties and it is the exception to find any of the member states being permitted to participate in this function. From this point of view the United States of America, the Dominion of Canada, and the Commonwealth of Australia may be regarded as belonging to the pure type, in which the whole treaty-making capacity is vested in the federal government; the member states or provinces possess no such capacity, although their co-operation may be required for the purpose of implementing a treaty. . .

Where the constitution of the federal state says nothing concerning the distribution of treaty-making power there is a presumption in International Law that the regional governments have no such power, i.e., the central government is to be deemed to have full and exclusive treaty-making power.

The Report of the International Law Commission on the Law of Treaties in 1953 (H. Lauterpacht, Special Rapporteur)⁹ is, according to the preface, "intended primarily as a formulation of existing law." In discussing the capacity of parties to enter into treaties, Lauterpacht points out, with illustrations, that the constitution of some federal states (e.g., Switzerland) authorize members of the federation to enter into agreements with one another and, to a much more limited degree, with foreign states. He notes that International Law authorizes states to determine the treaty-making capacity of their political subdivisions and submits that the conferment, by Constitutional Law, of the treaty-making capacity upon the member states, amounts to a delegation of that power on the part of the federal state. He comments:¹⁰

On the other hand, in the absence of such authority conferred by the federal law, member states of a federation cannot be regarded as endowed with the power to conclude treaties. For according to International Law, it is the federation which, in the absence of provisions of constitutional law to the contrary, is the subject of International Law and international intercourse. It follows that a treaty concluded by a member state in disregard of the constitution of the federation must also be considered as having been concluded in disregard of the limitations imposed by International Law upon its treaty-making power. As such it is not a treaty in the contemplation of International Law. As a treaty, it is void.

In Canada, of course, there is nothing in Constitutional Law conferring treaty-making authority on the provinces. There is nothing of the sort in the *B.N.A. Act* with its amendments; none of the royal prerogative in treaty-making is delegated to the provinces. In the void the presumption operates.

It is interesting to note that in the Report of the International Law Commission on the Law of Treaties in 1956,¹¹ G. G. Fitzmaurice, Special Rapporteur, would go even further than Lauterpacht. While admitting that in certain cases component parts of a federal state have, or appear to have, concluded treaties with foreign nations, Fitzmaurice maintains that in law:

These are really cases where the component part has simply acted as agent to bind the federation as a whole, in respect of a particular part of its territory, since a component part of a state cannot itself be a state (interna-

tionally) or have, except as agent, treaty-making capacity . . . (such) treaty will bind the federation, and will bind the constituent state not as such, but only as an (internationally) indistinguishable part of the federation.¹²

It should be noted that Fitzmaurice, when speaking of 'treaty', includes in such term an international agreement cast in a form different from that of a treaty, e.g., an exchange of notes, letters or memoranda.¹³

The basis for the presumption noted above is that it is a cardinal principle of every federation that a unified foreign policy in relation to other nations be provided and that international agreements entered into by the component units, inconsistent with the national interest and policy, be prevented. Without such unified foreign policy, the federation becomes an association of states, a confederation. In this respect, Hall notes:¹⁴

. . . the distinguishing marks of a federal state upon its international side consist in the existence of a central government to which the conduct of all external relations is confided and in the absence of any right on the part of the states forming the corporate whole to separate themselves from it.

And to similar effect, J. L. Brierly notes:¹⁵

But it is usual today to distinguish a federal state, that is to say, a union of states in which the control of the external relations of all the member states has been permanently surrendered to a central government so that the only state which exists for international purposes is the state formed by the union, from a confederation of states, in which, though a central government exists and exercises certain powers, it does not control all the external relations of the member states, and therefore for international purposes there exists not one but a number of states.

From the above it is clear that if Quebec, or any other province, was permitted by Constitutional Law to conduct its own international relations and sign its own international agreements, independently of any control by the federal government, it would, of necessity, cease to be a part of the federation of Canada and it would become a separate state, because it would then possess the essentials of statehood. Such effect is clear from the words of Brierly:¹⁶

A new state comes into existence when a community acquires, with a reasonable probability of permanence, the essential characteristics of a state, namely an organized government, a defined territory, and such degree of independence of control by any other state as to be capable of conducting its own international relations.

It is the object of this section of the paper to attempt to locate the power to bind Canada and its component parts internationally. When speaking of authority to act in external affairs one must distinguish between the executive act of entering into a treaty and the legislative act of implementing the treaty. For the purpose of treaty performance the British dualistic view is followed by Canada which dictates that, as opposed to the monistic view of the United States (Article 6 Sec. 2 of the U.S. Constitution), a validly concluded treaty does not automatically become the law of the land.¹⁷ Before it can be effective in the courts it must be embodied in a statute; without such statute private rights cannot be affected nor the existing law changed. Lord Atkin in the Privy Council in the *Labour Conventions* case observed:¹⁸

It will be essential to keep in mind the distinction between the formation and the performance of obligations constituted by a treaty, using the word

as comprising any agreement between two or more sovereign states. Within the British Empire, there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action . . . but it cannot be disputed that the creation of the obligations undertaken in treaties and the assent to their form and quality are the function of the executive alone.

Constitutional Law

It is a universally accepted principle of International Law that what authority or authorities shall exercise the treaty-making power of a sovereign state, what procedure is to be followed by its governments for making treaties binding it in International Law, and whether its political sub-divisions should have any part in their conclusion, are matters entirely for the constitution of that state to determine.¹⁹

To locate this executive power of making a treaty binding on Canada and its parts we must look therefore to the Canadian Constitution. The Constitution is based only in part on the *B.N.A. Act* with its amendments and the rest must be found in the statements and writings of secretaries of state for the colonies, in the minutes and resolutions of the Imperial Conferences, in the customs and actual situations that have grown up and been employed by the statesmen of the Empire, and in the judicial determinations.

The *B.N.A. Act* yields nothing concerning treaty-making and the effect of treaties when concluded, save Section 132 which reads as follows:

The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

By Section 132 then the Dominion parliament was vested with the authority to implement a treaty entered into by the British Empire with foreign countries whether such treaty incurred obligations for Canada or any province thereof. Such a treaty was made by the "imperial executive responsible to and controlled by the imperial parliament."²⁰

An example of the use of this power is seen in the Dominion legislation enacted to implement the Convention relating to the Regulation of Aerial Navigation. The Convention, signed at Paris in 1919, was a treaty between the Empire and foreign countries, His Majesty being represented by the Prime Minister of the United Kingdom as general plenipotentiary and also by separate plenipotentiaries for each of the Dominions, the latter signing for their respective Dominions as parts of the Empire. The Convention was ratified by the King on behalf of the Empire. The Dominion legislation was upheld as a valid exercise of the power given it by Section 132.²¹

The International Radiotelegraph Convention, 1927, was not a treaty between the British Empire and foreign countries. It was not concluded in Heads-of-States form but rather was an intergovernmental agreement. Canadian representatives were appointed and authorized to sign on behalf of Canada by Orders-in-Council, and ratification on behalf of

Canada was effected by an instrument signed by the Secretary of State for External Affairs without any intervention of the Crown. The Privy Council upheld the Dominion legislation enacted to implement the Convention but could not find the power in Section 132; rather they located it in the "peace, order and good government" clause.²²

The Privy Council found it "impossible to strain the Section" (Section 132) to cover the Dominion legislation enacted to implement the conventions adopted by general conferences of the International Labour Organization. These conventions had been approved by resolutions of the Senate and the House of Commons and the instruments of ratification were executed by the Secretary of State for External Affairs. The Privy Council noted:²³

The obligations are not obligations of Canada as a part of the British Empire, but of Canada, by virtue of her new status as an international person, and do not arise under a treaty between the British Empire and foreign countries.

With the mentioned emergence of Canada as an international person and the corresponding end of treaties concluded by the King applicable automatically to all parts of his realm, Section 132 became obsolete. At the time of Confederation it was not contemplated that the Dominion would ever make treaties with foreign countries independently of the imperial parliament. As Viscount Dunedin in the *Radio* case²⁴ observed:

This idea of Canada as a Dominion being bound by a convention equivalent to a treaty with foreign powers was quite unthought of in 1867.

and again Lord Atkin in the *Labour Conventions* case:²⁵

... it was not contemplated in 1867 that the Dominion would possess treaty-making powers.

It is therefore understandable that no provision is made in the *B.N.A. Act* vesting treaty-making power in either the Dominion executive or the provincial executive. Since, however, treaties binding on Canada or any of its provinces are no longer made by the imperial government it becomes necessary to look to the other sources noted above if we are to locate and fix the necessary executive authority today. The length of the following historical account was found necessary as the writer was driven back in time to find a suitable beginning to explain logically the coming across the seas of this executive authority.

The writer means to show that while before Confederation the individual colonies were seeking power to negotiate their own treaties, after Confederation this power was sought not by the individual provinces but by the federal authorities. The story of the successful search bears repeating since it illustrates that the Dominion parliament was always considered the channel of communication by the British parliament with respect to Commonwealth affairs and, on Canada's accession to international status, by other countries with respect to foreign affairs affecting Canada and its provinces. The story does show the devolution of treaty-making power to the Dominion executive; in the story the devolution of treaty-making to provincial executives is conspicuous by its absence.

Growth of Power in Canada

It was obviously the intention of Lord Durham, in his famous Report of 1840, that a division be made between colonial or internal matters and imperial matters, regulation of foreign relations and trade, and that only the former be given to the control of the colonial legislature. The following demonstrates that the division could not be maintained.

During the years 1846-1849 the Empire was placed on a free trade basis. In 1846 acts of the imperial parliament repealed the Corn Laws,²⁶ ended British preferences for goods from the colonies,²⁷ generally abandoned protectionist duties and empowered the British North American provinces to repeal duties previously enacted by the imperial parliament which had protected British manufacturers in these provinces from American and other foreign competition.²⁸ In 1849 the navigation code, which had restricted other nations from entry into the carrying trade of the Empire, was repealed.²⁹

The end of the old commercial system with the placing of the Empire on a free trade basis arrived not because of agitation by the colonies, though indeed such did exist, but rather because of agitation at home especially by manufacturers to whom the export trade was all important. During the first fifty years of the 19th century, England led the world as a manufacturing and exporting nation and manufacturers realized that no tariff protection was necessary to secure the home market. They were convinced that they could hold the markets of the colonies even in the face of high duties. These manufacturers needed raw materials and sought free entry into England for these materials.

Explaining the legislation of 1846 and 1849, Lord John Russell, then Prime Minister of the United Kingdom, stated the following:

We have plainly declared that, on the one hand, if we require productions similar to those which our colonies produce, we shall be ready to take them from other parts of the world; and, on the other hand, we have left our colonies free to provide themselves with the products of other countries than our own, and to impose upon the manufacturers of Great Britain equal duties with those imposed on foreign manufacturers.³⁰

Prior to this fiscal revolution it was not possible for any of the legislatures of the British North American provinces to enact legislation in contravention of fiscal legislation enacted by the imperial parliament; nor was it possible for any of the legislatures to reduce the differentials of the *British Possessions Acts*, which afforded British manufacturers a precedence over foreign imports into the colonies. Fiscal enactments of the provincial legislatures were always subordinate to tariff legislation of the imperial parliament. Attempts by the provinces at legislation in opposition would have to run the gauntlet of the colonial governor, with his veto power, and the British Board of Trade which, through the Colonial Office would advise the Cabinet, which in turn would advise disallowance. As an example of the instructions given to the colonial governors in these matters, Porritt quotes the following from the instructions of 1842:

The governor will therefore exercise all the legitimate influence of his office to prevent the introduction into the colonial legislature of any law by which

duties may be imposed on goods in reference to their place of production. . .³¹

It was assumed by the Board of Trade, the Colonial Office and the imperial parliament that the colonies, given a certain amount of fiscal freedom by the *Enabling Act* of 1846, would adopt the imperial fiscal policy of free trade as their own. It was not imagined that they would use this freedom to enact protectionist duties, least of all against British manufacturers. The *Enabling Act* had empowered the colonial legislatures only to repeal the *Tariff Act* passed by the imperial parliament for the colonies in 1843; no other fiscal power was given to them. However, with the complete and firm establishment of responsible government by 1849, evidenced by the *Rebellion Losses Act*, there began the conflict between the Colonial Office and the colonies over the fiscal policy of the colonies.

The first conflict occurred in 1850 when the legislature of the United Provinces, to facilitate reciprocal free trade between the British North American provinces, enacted a tariff with differential customs duties. Although Grey, then Colonial Secretary, protested, he declined to go all the way to asking the Cabinet to advise withholding royal assent to the Act.³²

In 1858, the legislature of the United Provinces enacted the first protectionist tariff in any part of the Empire after the free trade policy had been adopted. This tariff, the Cayley Tariff, although applicable against all comers, British or non-British, seems to have escaped the attention of the Colonial Office. A still more protectionist tariff was the Galt Tariff of 1859 which did not go unnoticed but which the imperial parliament was forced to accede to as Galt declared that colonial self-government meant nothing if it did not include fiscal freedom. Porritt observes:

By the time the legislature of Upper and Lower Canada determined to establish a national policy for these provinces, determined to protect manufacturing in Canada from all outside competition, British as well as American, responsible government was so firmly established and so unassailable that Galt and his colleagues of the Conservative Government at Toronto were perfectly certain that they took no risks when they intimated to Newcastle and to the Palmerston Government that the only alternative to acceptance of the Tariff Bill was military rule for the United Provinces.³³

The combination of the grant of responsible government and the fiscal revolution in the Empire led to tariff autonomy in the self-governing colonies. The fact that the colonies would have fiscal policies different from those of the United Kingdom meant that the old system of commercial treaties entered into by the United Kingdom, without consultation with nor consent of the colonies, but binding nevertheless on the whole Empire, would have to give way to individual agreements designed to best suit the needs of the individual colonies. From this it logically followed that advice respecting those needs had to come from those best suited to judge the same, i.e., colonial representatives would need to associate themselves with British officials in the negotiation of commercial agreements applicable to the colonies. The colonial legis-

latures therefore began requesting, if not demanding, the privilege of such association.

The first suggestion from any colony, that in treaty negotiations in which the colony was directly interested it should be directly represented, had come in 1848 when the government of the United Provinces urged that in the reciprocity negotiations proceeding at Washington there should be direct communication between Washington and Montreal, the seat of the government of the United Provinces. Three representatives of that government did associate themselves, unofficially, with the British minister at Washington in 1848 and 1849.

In 1850, New Brunswick, by a resolution of its House of Assembly, claimed direct representation in negotiations for commercial treaties and the following is part of that resolution:

... the withdrawal of all protection by the mother country, and the placing of the trade and productions of the colonies on the same footing as that of foreign nations in the British markets is disastrous and utterly ruinous to this province as a colony, unless full power is conceded to the colonies to treat with foreign nations on all subjects of trade and shipping, and without which the assertion that the colonies should be at liberty to trade with all parts of the world in the manner which might seem to them most advantageous is a mockery and a delusion.³⁴

The British minister at Washington in 1858-1864, Lord Lyons, repeatedly showed his disdain for colonial representatives, but with his departure and the denunciation of the reciprocity agreement of 1854 by Washington in 1865, a new era dawned. In response to a claim by the United Provinces for direct representation in the negotiations for a new reciprocity treaty, the Colonial Office suggested the organization of an interprovincial council of trade to formulate the views of all the British North American provinces on the negotiation of commercial treaties. The council, convened at Quebec in 1865, by resolution asked the British government to authorize members of the council, or a committee of them, to go to Washington, to confer with the British minister and to advise him of the needs of the British North American provinces. Lord Lyons' successor, Sir Frederick Bruce, had no objection to diplomatic association with Canadian representatives and the authorization was promptly secured through the Colonial Office. In 1866, Galt and three other delegates from the provinces went to Washington and, with Bruce's aid, were introduced to the Secretary of the Treasury and conferred with the Committee on Ways and Means of the House of Representatives, the committee with which tariff and internal revenue bills originated. Bruce was kept informed of their interchanges with the Committee and, not satisfied with what the Committee was willing to give, the delegates advised Bruce not to enter the agreement proposed by the Committee.

The council had also asked that the provinces should be allowed to open communications with Spain, Brazil and Mexico and that provincial representatives be allowed to conduct negotiations with them. A dispatch from the Foreign Office in 1865 defined the conditions under which it would sanction and facilitate visits of provincial representatives to

countries with which they desired commercial agreements. The position of colonial representatives was stated as follows:

... the agents who may be sent from the British North American colonies will not assume any independent character, or attempt to negotiate or conclude agreements with the governments of foreign countries but will only ... be authorized to confer with the British minister in each foreign country, and to afford him with information with regard to the interests of the British North American provinces.³⁵

The first instance of formal association of a colonial representative with a British minister in negotiating a treaty came in 1871 when John A. Macdonald was appointed by Her Majesty as one of her plenipotentiaries to negotiate the Treaty of Washington. Full powers were issued to him under the Great Seal of the United Kingdom. The treaty was primarily to settle disputes between the U.S.A. and the U.K. arising out of the American civil war and attempts by Macdonald and the British minister to negotiate a new reciprocity treaty between Canada and the U.S.A. were subordinate to the same and unsuccessful. Although Macdonald was not allowed into all the meetings that took place, he did sign the treaty along with the British minister. It should be remembered that Macdonald was a British plenipotentiary and not Canadian. George Brown in 1874 was appointed by Her Majesty as one of her plenipotentiaries to negotiate a treaty with the U.S.A. concerning commerce, navigation, and fisheries; the negotiations were unsuccessful. In 1879 the British government agreed to the appointment of a High Commissioner as an official representative of the Dominion government to reside in London and advise the British government of its views concerning, among other things, commercial treaties affecting Canada. Galt, the first High Commissioner, was associated with the British ambassador at Madrid to negotiate a reciprocity treaty with Spain. In the negotiations Galt was forced to take a decidedly secondary position and all his negotiations with the Spanish government were required to be filtered through the British ambassador. These negotiations failed and in 1884, Sir Charles Tupper, then High Commissioner, was appointed co-plenipotentiary with the British ambassador for the renewal of such negotiations. Tupper pressed for more power to be given to the Dominion representative and such was conceded by the Foreign Office as noted in their letter to him:

If the Spanish government are favourably disposed, the full power of these negotiations will be given to Sir Robert Morier and Sir Charles Tupper jointly. The actual negotiations would probably be conducted by Sir Charles Tupper, but the convention, if concluded, must be signed by both plenipotentiaries.³⁶

Although the negotiations had been unsuccessful, a significant recognition of co-ordinate power in the High Commissioner with the British ambassador was achieved. In the negotiation of the treaty of 1888 with the United States for a settlement of fisheries and boundary disputes, Tupper had equal power with his colleagues of the British Commission. Tupper signed with the other plenipotentiaries but the treaty failed of ratification by the United States. Tupper was associated with

the British ambassador in Paris for the negotiation of the Franco-Canadian reciprocity treaty of 1893. Both plenipotentiaries signed the treaty but, as in 1888, Tupper was the dominant partner in the negotiations.

The Dominion government had come a long way toward the achievement of independent treaty-making but the following conditions persisted: Tupper signed the treaty as representing the imperial government; the agreement was not between France and Canada but rather was styled an "Agreement between Great Britain and France, for regulating the Commercial relations between Canada and France in respect of Customs Tariffs"; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the President of France were the contracting parties. The Agreement did provide, however, that it was not to be ratified until approved by the Canadian parliament; such approval was given by the *French Treaty Act*, 1894.³⁷

In 1895 we see an attempt by the Colonial Office to curb the powers the Dominion government had been claiming, in fact exercising, in the negotiation of commercial treaties. A statement of the policy of the home government was sent by Ripon, Colonial Secretary, to the governors in all colonies with responsible government. According to Ripon:

A foreign power can only be approached through Her Majesty's representative, and any agreement entered into with it affecting any part of Her Majesty's dominions is an agreement between Her Majesty and the Sovereign of the foreign state; and it is to Her Majesty's government that the foreign state would apply in case of any question arising under it. To give the colonies the power of negotiating treaties for themselves without reference to Her Majesty's government would be to give them an international status, as separate and sovereign states. . . . The negotiation . . . must be conducted by Her Majesty's representative at the court of the foreign power (who) . . . should have the assistance either as a second plenipotentiary or in a subordinate capacity, as Her Majesty's government think the circumstances require, of a delegate appointed by the colonial government.³⁸

That this attempt was unsuccessful may be seen when one considers the next negotiation of a treaty of an exclusively commercial character in which Canada alone was concerned. In 1907, Laurier, Prime Minister of Canada, Fielding, Minister of Finance, and Brodeur, Minister of Marine and Fisheries, went to Paris to negotiate a second reciprocity treaty with the French Republic. The British ambassador in Paris, Sir Francis Bertie, was told in a dispatch from Sir Edward Grey, Secretary of State for Foreign Affairs, that the negotiations were to be left to the Canadian ministers who would keep him informed of their progress. The British ambassador's role was purely formal, at the opening and closing stages, and all the negotiations were left to the Canadian plenipotentiaries. Full powers were given to the British ambassador and the Canadian delegates to sign the treaty after the draft had been approved by the Colonial Office and the Board of Trade. Ratification followed approval by both the British and Dominion governments. It should be noted that Fielding and Brodeur were not plenipotentiaries of the Dominion government but of His Majesty. The agreement was styled a "Convention Regulating the Commercial Relations between Canada and France."

While we have seen the growing participation of the Dominion in the making of commercial treaties it was not until the conclusion of the First World War that it took any part in political treaties. In 1919 all the Dominions were given the right to participate, admittedly to a limited extent, in the negotiations at the Paris Peace Conference. The United Kingdom representatives signed the Treaty of Versailles for the Empire generally and the Dominion representatives signed for the parts of the Empire they represented. The Treaty was concluded with the British Empire as high contracting party. The full powers which were issued to the Dominion representatives were prepared in the British Foreign Office and passed under the Great Seal of the United Kingdom. They were issued as a result of a Dominion Order-in-Council advising His Majesty to appoint certain designated Dominion representatives as plenipotentiaries to conclude the treaties in question and to sign them for His Majesty in respect of the Dominion concerned. The Treaty was not ratified by the King until the parliaments of all the Dominions had passed resolutions approving the ratification and advised His Majesty of the same. In each Dominion, both Houses of Parliament adopted a resolution approving the Treaty. The resulting Canadian Order-in-Council stated that the Governor-General-in-Council "is pleased to order and doth hereby order that His Majesty the King be humbly moved to approve, accept, confirm and ratify the said Treaty of Peace."³⁹

The Dominions, by the "Annex to the Covenant of the League of Nations," were declared to be original members of the League and as such were therefore original members of the International Labour Organization. In exercising their separate membership in the I.L.O. and in the ratification of their draft conventions, the Dominions acted directly and without even formal intervention of the imperial government or of the King himself.

In 1923 a procedure similar to that of the 1907 reciprocity treaty with France was followed when a commercial treaty with Italy entitled a "Commercial Convention between Canada and Italy", was signed by one British and two Canadian representatives, all three being appointed plenipotentiaries by His Majesty.

In 1923 the Canadian government, by telegram from the Governor-General to the Colonial Secretary, requested that the Secretary of State for Foreign Affairs have full powers issued to Ernest Lapointe, Secretary of State for External Affairs for Canada, to enable him to sign the Halibut Fisheries Treaty with the United States. Such full powers were issued and the British ambassador at Washington was instructed to sign the treaty with Mr. Lapointe. Objection to this latter instruction was raised by the Dominion government and the British ambassador was therefore instructed by the British government not to sign the treaty. This was therefore the first time that a treaty on behalf of a Dominion was signed solely by the representative of that Dominion. The agreement was in the Heads-of-States form with His Majesty as the high contracting party; full powers, without geographical limitation, were

issued by the King and passed under the Great Seal of the United Kingdom, and ratification was by His Majesty under the Great Seal. In the United States Treaty Series it is entitled a "Convention between the United States and Great Britain"; in the United Kingdom Treaty Series it is entitled a "Treaty between Canada and the United States".

At the Imperial Conference of 1926, the practice of using the British Empire as high contracting party, as was done in the Treaty of Versailles, was condemned as "... suggesting that the Dominions and India are not on a footing of equality with Great Britain as participants in the treaties in question. . .".⁴⁰ A return to the Heads-of-States form was advocated with the treaty in each case indicating the part of the Empire on behalf of which His Majesty was acting. Actually we can regard this as a formulation of existing practice as we have seen the Heads-of-States form used in the Halibut Fisheries Treaty and in the Convention of June 6, 1924, for suppressing smuggling operations between Canada and the United States. His Majesty was the high contracting party and it was indicated in the preamble that he was a party only in respect of the Dominion of Canada.

In 1928 Mr. Lapointe, Secretary of State for External Affairs, signed and sealed the instrument of ratification by which Canada became a party to the International Radio Telegraphic Convention of 1927 and the Privy Council implicitly recognized this mode of ratification in *Re Regulation and Control of Radio Communication*.⁴¹

The Treaty for the Renunciation of War, 1928, was concluded in a form according to the resolutions of the Imperial Conference of 1926 (Heads-of-States form, His Majesty as high contracting party for all the members of the Commonwealth). It noted in the preamble that His Majesty appointed separate plenipotentiaries "For the Dominion of Canada", "For the Commonwealth of Australia", etc. Ratification by His Majesty was effected by some seven separate instruments, each instrument showing that by that instrument His Majesty was ratifying only "in respect of our Commonwealth of Australia", or "in respect of our Dominion of Canada", etc. The instrument of ratification of Canada was delivered by the Dominion government's minister in Washington.

The London Naval Treaty of 1930 was concluded in the same form as the Treaty of 1928 with the representatives of the Dominions signing along with the representatives of Great Britain. Ratification of the Treaty was by His Majesty in respect of each and all of the members of the British Commonwealth.

In the foregoing we have seen the growing demand for, and gradual assertion of, power in the Dominion government first to be represented in the negotiations of any treaty affecting Canada and its provinces, then to sign such a treaty along with the representative of the government of the United Kingdom, then to take the leading role in the negotiation of commercial treaties and finally in 1923 the power to sign a treaty alone. We have seen the Dominion government's representatives accorded the privilege of participating in the Peace Conference and signing the

resultant political treaty on behalf of Canada. We have seen, from the correspondence respecting the signature of the Halibut Fisheries Treaty and the approval of the procedure followed by the Imperial Conference, that, at least by 1923, the Dominion government acted independently of the United Kingdom government in advising the Crown in the exercise of its prerogative in foreign affairs. We see at the Imperial Conference of 1923 the recognition and approval of the practice of intergovernmental agreements, where the intervention of the Crown was not necessary. However, the Royal Prerogative of treaty-making resided with the Crown in Britain.

Although the name of the Great Seal of the United Kingdom was changed in 1922 to Great Seal of the Realm, this was still a symbol of the retention of the Royal Prerogative in the Crown in Britain and, to many, a symbol of the United Kingdom government's authority over the Dominions. The Great Seal authenticated the King's signature and was essential to its validity; it was therefore necessary to the proper completion of a treaty concluded in Heads-of-States form. The Great Seal was in the keeping of the Lord Chancellor and released only under the authority of a Royal Warrant. The Warrant was signed by His Majesty, authenticated by the Fixing of the Signet and counter-signed by the Minister responsible for tendering the advice to which the document was to give effect, e.g., the Secretary of State for Foreign Affairs, where the document was the instrument signifying the issue of full powers to a Dominion plenipotentiary or the instrument of ratification of a Dominion treaty.

In the *Bonanza Creek* case⁴² in 1916 counsel argued that all prerogatives necessarily incidental to the conduct of an independent state by that time resided in Canada. Lord Haldane pointed to Section 9 of the *B.N.A. Act* declaring the executive government and authority over Canada to continue and be vested in the Queen, and also to Sections 14, 15 and 16 as evidence that counsel's argument was invalid. He noted that there was nothing in the *B.N.A. Act* corresponding to Section 61 of the *Australian Commonwealth Act* which provided that the executive power, though declared to be in the Sovereign, was yet to be exercisable by the Governor-General. Lord Haldane referring to the above Sections of the *B.N.A. Act* remarked as follows:

These and other provisions of the *British North America Act* appear to preserve prerogative rights of the Crown which would pass if the scheme were that contended for, and to negative the theory that the Governor-General is made a viceroy in the full sense, and they point to the different conclusion that for the measure of his powers the words of his commission and of the statute itself must be looked to.

The Inter-Imperial Relations Committee in its report to the Imperial Conference of 1926 stated the then position of the Governors-General:

In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great

Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government.⁴³

The *Seals Act*,⁴⁴ a Canadian statute passed in 1939, provided that any document which was hitherto necessarily issued by and in the name of the Queen and passed under the Great Seal of the Realm could now be issued by and with the authority of the Queen and passed under the Great Seal of Canada. The Governor-General-in-Council was empowered to make orders and regulations governing the procedure for the use of the Seal and for the issuance and countersignature of documents under the sign manual. By this Act the Dominion would be able to bypass the channel of communication to the Crown then existing, i.e., through the United Kingdom's Secretary of State, and thus eliminate the last element of control of the United Kingdom government.

With the appointment of a new Governor-General for Canada in 1947 new Letters Patent were issued by the King. Clauses 2 and 3 of these Letters Patent read as follows:⁴⁵

2. And we do hereby authorize and empower our Governor-General with the advice of our Privy Council for Canada or of any members thereof or individually, as the case requires, to exercise all powers and authorities lawfully belonging to us in respect of Canada. . .

3. And we hereby authorize and empower our Governor-General to keep and use Our Great Seal of Canada for sealing all things whatsoever that may be passed under Our Great Seal of Canada.

In the combination of the *Seals Act* and the terms of the new Letters Patent we see the complete devolution of the prerogatives and no one can now deny the full power in the Dominion government to make treaties without provincial interference.

Provincial Limitations

It is submitted that not only is the power in the Dominion government full but it is also exclusive. Although for the sake of an attempt at brevity the writer omitted a number of agreements and steps in tracing the growth of treaty-making power, the reader is assured that nothing suggesting provincial powers in the field was omitted for the sake of putting forth a better argument. In the books and articles on the subject reviewed by the writer one finds no mention of claims by the provinces for representation in the negotiation or signature of international agreements and, logically, no talk of such privileges being given to them. As the executive power of making treaties came across the seas gradually, the recipient was always the Dominion government and never the provincial governments. As the executive power was not given to anyone in Canada by the *B.N.A. Act* and, as illustrated above, it was always the Dominion government designated by the imperial government to receive such bits of power as it deemed necessary to relinquish, when and where did the provinces ever receive such power?

M. Gérin-Lajoie says "according to the Constitution of Canada, Quebec has the power to sign international agreements dealing with matters under provincial jurisdiction."⁴⁶ Section 92 of the *B.N.A. Act* lists the matters within provincial jurisdiction but one should not lose sight of the

fact that Section 92 gives the provinces power to make laws in relation to those matters and not power to make agreements. Legislative authority does not necessarily carry with it executive authority. To demonstrate this point it is not necessary to go further than Section 132 of the *B.N.A. Act* whereby the Dominion parliament was given power to legislate to implement treaties, but no one understood this Section to give the Dominion parliament power to make treaties.

Another indication of the provinces' incompetence to make international agreements is seen in the limitation of their legislative power to enactments having their operation within the confines of the province. On the other hand, Section 3 of the *Statute of Westminster*, 1931, reads:

It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

This enactment of course is in recognition of the international status which had been obtained by that time by the Dominion government. No similar privilege has to date been accorded the provincial legislatures.

The position of the provincial Lieutenant-Governors precludes the possibility of the prerogative power being delegated to them. They are appointed not by the Sovereign but by the Governor-General-in-Council by instrument under the Great Seal of Canada.⁴⁷ They are removable by the Governor-General and their salaries are fixed and provided by the parliament of Canada.⁴⁸ There is no direct contact with the Sovereign and, therefore, the Royal Prerogative of treaty-making cannot directly descend upon them by any delegation through Letters Patent or usage.

It is submitted therefore that provinces wishing to enter into binding international agreements must do so with the authority and consent of the central executive.

Agreements between departments of the provincial government and departments of foreign governments are not international agreements governed by International Law but rather, like agreements between provincial governments and private individuals and corporations, within the province or in other jurisdictions, are contracts whose interpretation and enforcement are governed by private International Law.

O'Connell has the following to say in determining whether an agreement is a treaty, and so governed by International Law, or an agreement governed by private International Law.

Conservative opinion holds to the view that no agreement is a treaty unless signed with the authority of the Head of State or the Foreign Office. Generally speaking, interdepartmental agreements, that is, between corresponding government departments of two nations, are not treaties and are ordinarily subject to private law, though on occasions they may be subjected intentionally to International Law. The practice of the United Kingdom and the United States is to recognize as treaties only agreements negotiated through the Foreign Office or the State Department. Agreements between Ministries of Agriculture, for example, are regarded as matters of private law, and Full Powers for their negotiation are not issued. . . . It does not follow that, because agreements not negotiated between Foreign Ministries are not treaties, officials of a Ministry of Agriculture or Transport may not be qualified to sign a treaty; rather, their authorization to do so must emanate from the Foreign Ministry and take the form either of Full Powers or a letter of instructions.⁴⁹

If the provincial executive sought by international agreement to bind not merely a department in its government but the province itself, and the foreign nation with whom it contracted recognized power in the provincial executive to do the same, then the province would be well on its way to becoming a state in the full International Law sense of the word.

Conclusions

1. International Law precludes the possibility of individual provinces remaining members of the federation of Canada and entering into an international agreement intended to create legal rights and obligations, or to establish relationships, governed by International Law.
2. Canadian Constitutional Law dictates that the power to bind Canada and its provinces by international agreement is full and exclusive in the central executive with no part of it exercisable by the provincial executives.
3. The Dominion parliament does not have unlimited power to implement all international agreements it enters into but rather needs the co-operation of provincial legislatures if the implementation requires an alteration in domestic law and the legislation necessary to effect such alteration is in the fields of legislative authority given by the Constitution to the provinces.
4. If a province does enter into an agreement with a foreign state and if the foreign state with whom it contracts accepts the fact that the province alone will be responsible for the fulfilment of the agreement then two results are possible:
 - (a) The province would cease to be a member of the federation and would achieve international status. The agreement would be subject to public International Law.
 - (b) The province would remain a member of the federation and the agreement would be subject to private International Law.

Which result would come to pass would depend on the success of a province's assertion against the central government of independence of any control over its foreign relations and the external recognition of such independent status accorded by the family of nations.

APPENDIX I Colonial and Imperial Conferences

To look at the motions, comments and resolutions at these conferences is to see the change in attitudes of the British and colonial governments over the years and so the change in customs which crystallize into conventions and then into constitutional law. A sampling is given below.

Colonial Conference of 1887

Sir Francis Dillon Bell, Agent-General of New Zealand, submitted to the Conference a memorandum on "Negotiations with Foreign Powers

in Matters of Trade". It was admitted that where a colony was desirous of entering into negotiations with a foreign country it need only apply for the necessary power and assistance and the imperial government would secure and provide the same. Bell, it appears, sought a general concession of power to enter into such negotiations without the need for special application being made in each instance. The other delegates to the conference expressed themselves as satisfied with the existing procedure and Bell's proposal was withdrawn.

Colonial Conference of 1894

Sir Henry Wrixon, one of the representatives from the government of Victoria, argued for the adoption of a resolution favouring an Imperial Preference, and calling for imperial legislation enabling dependencies of the Empire to enter into agreements of commercial reciprocity with Great Britain and with one another. In arguing for such freedom Wrixon pointed to a greater freedom enjoyed, in his view, by Canada and the Cape Colony: freedom to conclude commercial treaties with foreign powers. The Minister of Finance for the Dominion of Canada, George Eulas Foster, in denying that Canada possessed such freedom, described the situation as he saw it during a Commons exchange:

If we wish to negotiate a treaty with Spain that in some respects would be beneficial to us, we simply make our request to have some person we name associated with their ambassador, and whilst their ambassador is materially the prime mover, the negotiations are chiefly carried on by our plenipotentiary. It is an Imperial Treaty.

Sir Henry Wrixon: A treaty between Great Britain and Spain.

Hon. Mr. Foster: Yes, applicable to Canada. . . . I am of the opinion that so long as the colonial reaction exists, the power to negotiate our own treaties, while we are a part of the Empire, is undesirable and impossible. . . . I am entirely at one and so are the people of Canada, as well as the parliament of Canada, with the sentiment that as we are all parts of one country and we are under that one imperial government, the imperial power must negotiate with regard to these treaties, but at the same time we have all the freedom that is necessary and all the voice that we could possibly desire.

Colonial Conference of 1902

The government of the Commonwealth of Australia urged consultation with the colonies prior to Great Britain entering into treaties which might affect them. Sir Wilfrid Laurier pointed out that such consultation had been going on already and he noted that Canada was satisfied with the existing situation.

In all the treaties in which we have been indirectly interested as a colony, no action has been taken that could affect us until we had been given an opportunity, either to accept or dissent from that treaty, or to present observations with regard to it.

In order to have something on the record the following resolution was put and carried unanimously:

That so far as may be consistent with the confidential negotiations of treaties with Foreign Powers, the views of the Colonies affected should be obtained in order that they may be in a better position to give adhesion to such treaties.

Colonial Conference of 1907

The following resolution was unanimously agreed to:

That all doubts should be removed as to the right of the self-governing Dependencies to make reciprocal and preferential fiscal agreements with each other and with the United Kingdom, and further, that such right should not be fettered by Imperial Treaties or conventions without their concurrence.

Imperial Conference of 1911

The following resolution, moved by Sir Wilfrid Laurier, was unanimously agreed to:

That His Majesty's Government be requested to open negotiations with the several foreign governments having commercial treaties which apply to the Oversea Dominions with a view to securing liberty for any of those Dominions which may so desire to withdraw from the operation of the Treaty without impairing the Treaty in respect to the rest of the Empire.

Imperial Conference of 1923

The procedure followed by Canada in the negotiation and signature of the Halibut Fisheries Treaty of 1923 was approved and it was unanimously resolved that it should be followed in the future. Part of the resolution concerning the procedure to be followed in concluding treaties in the form of Heads of States reads as follows:

Bilateral treaties imposing obligations on one part of the Empire only should be signed by a representative of the government of that part. The Full Power issued to such representative should indicate the part of the Empire in respect of which the obligations are to be undertaken. . . .

The Conference also recognized the practice of agreements made between governments as opposed to agreements between Heads of States, and resolved as follows:

Such agreements, which are usually of a technical or administrative character, are made in the names of the signatory governments, and signed by representatives of those governments, who do not act under Full Powers issued by the Heads of States; they are not ratified by the Heads of States, though in some cases some form of acceptance or confirmation by the governments concerned is employed. As regards agreements of this nature the existing practice should be continued. . . .

Imperial Conference of 1926

This Conference laid down the principles (the Balfour Declaration) which were to bring about the *Statute of Westminster*, 1931. The Balfour Declaration is contained in the Report of the Inter-Imperial Relations Committee an extract of which reads:

. . . we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.

APPENDIX II Judicial Decisions

Although we do not have an explicit judicial pronouncement on the location of the executive power of entering into treaties binding on Can-

ada and its provinces, it was thought worthwhile to note what in fact has been said by the courts on the matter.

*Labour Conventions Case*¹

The Supreme Court of Canada being evenly divided on the issue of whether the federal parliament could enact legislation implementing conventions of the International Labour Organization adopted by it, appeal was taken to the Privy Council. The Privy Council decided that the federal parliament did not have unlimited power to enact legislation to implement a Canadian treaty as opposed to an Empire treaty. Finding that treaty legislation power did not exist in the distribution of powers in the *B.N.A. Act* the Privy Council filled the void with the principle that "as a treaty deals with a particular class of subjects so will the legislative power of performing it be ascertained". The Privy Council stated that it chose not to decide the question of where the executive power of negotiating and entering into treaties resided.

Although the Privy Council chose not to decide the question, the inferences in their judgment point unmistakably to the power residing in the federal parliament. The judgment notes the two steps in the treaty process (entering into the treaty and performing its provisions) and points out that performance may have to be undertaken by different legislatures, and says:

... and the executives have the task of obtaining the legislative assent not of the one Parliament to whom they may be responsible, but possibly of several Parliaments to whom they stand in no direct relation.²

The "executive" they refer to must be the central executive. Again, in speaking of Canada's new international status, they remark:

... it follows from what has been said that no further legislative competence is obtained by the Dominion from its accession to international status, and the consequent increase in the scope of its executive functions.

The "increase in the scope of its executive functions" must refer to the Dominion parliament's power to make treaties. That the Privy Council recognized such power in the central executive is obvious in the following statement:

... the Dominion cannot, merely by making promise to foreign countries, clothe itself with legislative authority inconsistent with the constitution which gave it birth.³

In the Supreme Court of Canada, although the justices were evenly divided, 3 to 3, over whether the implementing legislation was *ultra vires*, the justices split 4 to 2 in favour of the central executive having treaty-making authority. Thus Crockett, J., while holding the legislation *ultra vires*, said:

While I agree with the learned Chief Justice that the Government of Canada must now be held to be the proper medium for the formal conclusion of international conventions, whether they affect Canada as a whole or any of its provinces separately...⁴

Chief Justice Duff denied the argument of the provinces that the

Dominion government had no power to conclude international agreements and pointed out that the Imperial Conference of 1926,

categorically recognizes treaties in the form of agreements between Governments in which His Majesty does not formally appear, and in respect of which there has been no Royal intervention. Constitutional law consists very largely of established constitutional usages recognized by the Courts as embodying a rule of law. An Imperial Conference, it is true, possesses no legislative authority. But there could hardly be more authoritative evidence as to constitutional usage than the declarations of such a Conference.⁵

Duff, C.J., felt the time had come when the usages embodied in the Resolutions of the Imperial Conferences "must be recognized by the Courts as having the force of law."

Referring to the executive authority of the provinces Duff, C.J., states:

In regards all such international arrangements, it is a necessary consequence of the respective positions of the Dominion executive and the provincial executives that this authority resides in the Parliament of Canada. The Lieutenant-Governors represent the Crown for certain purposes. But, in no respect does the Lieutenant-Governor of a province represent the Crown in respect of relations with foreign governments. The Canadian executive, again, constitutionally acts under responsibility to the Parliament of Canada and it is that Parliament alone which can constitutionally control its conduct of external affairs.⁶

Scott Case⁷

In this case the *Reciprocal Enforcement of Maintenance Orders Act*,⁸ an Ontario statute, was attacked as being *ultra vires* the Ontario Legislature as being in the nature of an international agreement. The Supreme Court of Canada held the legislation *intra vires* because the arrangement, by reason of which the statute was enacted, was not a treaty as there was nothing binding in the scheme, which consisted merely of voluntary and complementary enactments of two legislatures. Because the legislation was not in furtherance of an international agreement it was held to be within the power of the provincial legislature. It is obvious from the words of the various justices who took part in the decision that treaty-making authority resided in the Parliament of Canada and that not a bit of it resided in the provincial legislatures. Locke, J., at p. 444 said:

A further objection to the validity of the statute was that the adoption of this statute and of similar legislation by other reciprocal states indicates that an agreement had been made between the Province and such states to legislate in this manner, and so was an entry by the Province into matters of international comity and amounted to a treaty. The short answer to this contention is that there is no evidence to suggest that any such agreement existed, and that the legislation may be repealed at any time by the Legislature which enacted it. *No agreement to the contrary* by the Province, even if it could be suggested that any such agreement had been made, *would have any legal effect*.

In the judgment of Abbott, J., agreeing with the view expressed by the Chief Justice in the Court below we read:

I am unable to see any valid legal reason why the Province of Ontario cannot, in relation to a subject-matter within its legislative jurisdiction, make a reciprocal arrangement with another Province or a foreign state in relation to such subject-matter. *It is not, in my opinion, the exercise of any treaty-making authority vested in the Parliament of Canada.*

Appendix III

Survey of Departmental Practice

Department of Education

Person Interviewed: A. W. Bishop, Registrar.

Teacher Exchange

Exchanges are arranged for Ontario teachers with teachers in other provinces, the United Kingdom, and the United States.

Applicants, with permission of their own school boards, apply to the Teacher Exchange Officer, A. W. Bishop, who, if satisfied with their credentials, forwards the application to the Canadian Education Association. The Secretary of the C.E.A., C. Routley, deals directly with the Director of the League for Exchange of Commonwealth Teachers in England, Mr. Bell, or with Mrs. Stewart of the Department of Health, Education and Welfare in the U.S. or with the Teacher Exchange Officers in the other provinces. Between them they try to 'match pairs'. The applicant receives his salary from his own school board which remains subject to the usual deductions for superannuation contributions and income tax. The school board continues its contribution to superannuation while the teacher is abroad.

From the above it is obvious that, not only are there no agreements between the Department and Departments of Education in other jurisdictions, there is no contact between them. All arrangements are made through the Canadian Education Association.

Foreign Teachers' Qualifications

To obtain a teaching position in Ontario a foreign teacher is required to obtain a Letter of Good Standing from the Department. The teacher is required to show academic qualifications equivalent to an Ontario teacher and equivalent teacher training. The Registrar writes directly to the teacher's former school board for a certificate that the teacher left in good standing with that board. Similarly, requests from foreign jurisdictions respecting teachers' qualifications are filled by the Department and local school boards.

It is obvious that under this system there is no requirement for agreements for across-the-board recognition of qualifications of teachers from other jurisdictions but that the matter is dealt with on an *ad hoc* basis.

Teacher Education Branch

Person Interviewed: G. L. Woodruff, Assistant Director.

Each year students come from Bermuda (300 since 1941), Nigeria, and Trinidad to take the course prescribed by Ontario for public school teachers, to enable them to teach in their own country. The fees for the course are paid by the students themselves although often reimbursed by their home countries.

Arrangements for their admittance are very informal. The Minister of Education of the foreign country will deal by phone, letter or sometimes will visit the Ontario Minister of Education. No agreements are deemed necessary and the Ontario Minister merely reviews each request and informs his counterpart of how many pupils they are prepared to accommodate each year.

Teachers to Foreign Countries

The provision of Ontario-trained teachers for the new nations of Africa is handled by the External Aid Branch of the Department of External Affairs.

Department of Lands and Forests

Person Interviewed: G. Ferguson, Chief of Law Branch.

Mr. Ferguson points out that his Minister's instructions to the Department are that all agreements, of any kind, are to be filed with the Law Branch. He knows of no agreement entered into by the Department with a corresponding department in any of the United States or in any of the provinces.

There is American legislation permitting reciprocal agreements and compacts between individual states and bordering provinces for the prevention and control of forest fires (1949, 63 Stat. 271, 1955, 69 Stat. 66). Mr. Ferguson said he was unaware of such legislation but that a few years ago the Department had looked into what would be required in making such agreements with contiguous states. They decided that the present working arrangements, without agreements, were quite satisfactory and that little benefit could be gained for the amount of trouble needed in working out such agreements.

Mr. Ferguson produced a list of well over 100 committees assisted by head office personnel of the Department to indicate the many conferences and meetings at which personnel from the Department meet and discuss common problems with their counterparts in other provinces and states. As a result of these encounters the various jurisdictions may follow similar courses of action and enact similar legislation on the recommendations of their representatives. Co-operation, then, does take place but without the necessity of written agreements.

Department of Highways

Persons Interviewed: J. Walter, Director of Design; W. Bidell, Director of Planning; D. A. Crosbie, Director of Legal Branch.

Standardization of Traffic Signs

No agreements exist between Ontario and other provinces or states respecting common traffic signs. The Department does adopt certain signs used in the United States and prescribed by their Bureau of Public Roads for the simple reason that "they've been at it longer". Similarly various states copy the Department's signs.

Association, Conferences, etc.

Representatives of the Department do belong to various associations and attend numerous conferences, both national and international, e.g., the Canadian Good Roads Association. These conferences permit the exchange of technical information but the representatives have no power to bind their respective jurisdictions to any future courses of action. At the most they can, on their return, recommend the adherence to suggested modes of conduct.

At various meetings the Departments of Highways of bordering states and provinces will unveil their plans for road building but while the plans of the bordering jurisdiction are bound to influence their own plans they have not entered into agreements in this area except with respect to international bridges.

International Bridges

Mr. Crosbie examined all the files of the Department relating to international bridges and set out in a memorandum a resumé of these bridges in which the Department had accepted or been given some responsibility.

The only bridge requiring an agreement between the Department and a bordering state was the bridge built at Pigeon River. In this instance an agreement was entered into by Her Majesty the Queen in Right of Ontario as represented by the Minister of Highways with the State of Minnesota as represented by its Commissioner of Highways. The agreement concerns the construction of the said bridge and terms of payment for the same. Enabling federal legislation was passed by Canada (S.C. 1959, Ch. 51) and Section 3 of the *Pigeon River Bridge Act* reads, in part,

The Province of Ontario may, with the approval of the Governor-in-Council, enter into an agreement with the State of Minnesota for the construction, operation and maintenance of a bridge across the Pigeon River...

A subsequent agreement was entered into, providing for the continuing maintenance of the structure, by an exchange of letters between the Minister of Highways of Ontario and the Commissioner of Highways of Minnesota. The agreement for the construction of the bridge was approved by federal Order-in-Council, February 23, 1961.

This technique must be considered the exception to the rule and the usual procedure is spelled out in the Report by the Department to the County Bridge Committee respecting a Proposed International Bridge at Kingston. Concerning the necessary legislation the Report reads:

An international bridge requires close co-operation and agreement between the two sovereign states. The respective governments of Canada and the United States have sole jurisdiction in respect of international obligations entered into on behalf of their nations and thus the Government of Canada must sanction by legislation any undertaking which necessitates an agreement with the United States or any agency thereof. The Government will also have to give consideration to the nature and constitution of any body that may be authorized to construct and operate an international bridge.

Department of the Attorney-General

Criminal Law Division

Person Interviewed: G. K. Booth, Administrative Officer.

Requests often come in from foreign countries for assistance by the Department in obtaining evidence on commission from possible witnesses resident in Ontario, to civil and criminal actions in those foreign countries. The requests often come directly from the consulate to the Lieutenant-Governor and sometimes through the Department of External Affairs. Requests by the Department for similar assistance from foreign countries are processed through the Department of External Affairs. No agreements for such co-operation are in effect nor considered necessary.

This division is charged with the responsibility of administering the *Reciprocal Enforcement of Maintenance Orders Act* which arrangement, of course, received judicial sanction in the *Scott* case.

Emergency Measures Organization

Person Interviewed: R. Stock, Deputy Director.

The Ontario provincial government has not entered into any agreements with bordering states. Since they are planning for possible nuclear attack Mr. Stock pointed out that it would be "ridiculous to plan in isolation with a bordering state—co-ordination must occur at the federal level".

On November 15, 1963, Canada and the U.S. entered into the Agreement on Civil Emergency Planning. The agreement between the two federal governments took the form of an exchange of notes between Paul Martin, Secretary of State for External Affairs and W. W. Butterworth, the U.S. ambassador. Under the agreement a Joint Planning Civil Emergency Committee was constituted with delegates to the Committee from both sides of the border. This Committee, which meets twice a year, alternately in each country, has the task of planning for a maximum degree of cross-border emergency operational readiness. The agreement does not provide for any formal conclusion of pacts between provinces or states or between municipalities, and Mr. Stock assures me that to date Ontario has not seen fit to enter into any agreements with its neighbours.

Mr. Stock mentioned that Quebec has an agreement with New York State in this area. On examination the 'agreement' turns out to be a 'Memorandum of Understanding between Quebec and New York State re Mutual Aid in Civil Defense Activities.' The memorandum reads, in part:

... to implement the intent of the U.S./Can. Joint Civil Emergency Planning Agreement dated Nov. 15, 1963.

Mr. Stock points out that the Joint Committee has urged that the provinces and states enter into such 'agreements' and that Ontario will probably do so in the future.

R. A. Copeland of the Civil Law Division of the Department conducted the following interviews and reported the results to me.

Ontario Provincial Police

Person Interviewed: T. H. Trimble, Deputy Commissioner.

There exists a 'wonderful co-operation with police forces of other states' with a constant intermingling of top police officials at various conferences. As an example of such co-operation Trimble noted that state police are able to teletype directly to O.P.P. headquarters for fingerprint checks and such requests are treated as if they came from an O.P.P. detachment. Despite the existence of widespread co-operation there are, according to Trimble, no written agreements between the various police forces.

Fire Protection Branch

Person Interviewed: M. S. Hurst, Fire Marshall.

Unlike the O.P.P. there is little or no need for co-operation at the province-state level and accordingly no agreements have been entered into by the province in the area of fire protection. Hurst did note that certain border municipalities, e.g., Niagara Falls and Fort Erie, do co-operate in this area, adaptors being available to allow each to use the other's equipment, but there are no agreements setting out the basis of such co-operation.

The Hydro-Electric Power Commission of Ontario

Person Interviewed: R. H. Hillery, Director of Operations.

Export of Power

Up until the past few years it was considered bad politically to export power; i.e., Canada's heritage, potential, keep power at home to attract industry. In fact, until 1961 there existed an export tax on power; in that year, \$2 per HP year or .03¢ per kilowatt hour. This attitude has changed with the realization of large power resources being unused, which unlike other resources that are capable of being saved for future use, are being literally wasted.

Federal legislation has always governed the export of power; the *Exportation of Power and Fluids and Importation of Gas Act*, a Canadian statute was enacted in 1907, repealed in 1959 and replaced with the *National Energy Board Act* (S.C. 1959 c. 46). The Act presently prohibits the export of power from Canada without a licence issued by the Federal Board. The U.S. Federal Power Commission exerts similar authority over American producers.

The Board can grant a licence up to 25 years duration; the applicant seeks a licence for whatever period he desires. The Board's policy is aimed at safeguarding Canadian industry; applications for a licence to export firm, as opposed to interruptible, power, will be refused unless it can be demonstrated and guaranteed that the quantity to be exported,

. . . does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada . . . (S.C. 1959, c. 46, sec. 83(a).)

The Board also seeks to guard against the export of power to a small locality which could become to dependent on such power that an interruption would be considered an unfriendly act.

In 1950 the 'Treaty between Canada and the United States of America concerning the Diversion of the Niagara River' was signed at Washington. The agreement provided that the two countries would share equally in the total flow diverted from the Falls after certain minimums were allowed over the Falls for aesthetic purposes.

With the above in mind it is easier to understand the actual operations. The Control Dam at Niagara regulating the flow over the Falls is operated by Ontario Hydro. The costs of maintaining and operating the Control Dam are shared equally between Ontario Hydro and the Power Authority of the State of New York, both agencies of their respective governments. Similarly, Ontario Hydro operates the Iroquois Dam on the St. Lawrence and the costs are shared by the two above entities. The terms of operation and payment for same, together with provision of inter-connection facilities for the interchange of power, are reduced to a 'Memorandum of Understanding between the Authority and the Commission.' The memorandum is executed by the parties attaching their corporate seals attested by the Chairmen and Secretaries of the parties. It is a most formal document. Section 800 of the memorandum reads:

The agreements and obligations expressed herein are subject to the initial and continuing governmental permission to Authority and Hydro to establish, operate and maintain the interconnection herein specified, and export energy under the terms of this memorandum.

The memorandum's duration is stated to be 25 years. The memorandum contains recitals of the requirements of the Niagara Treaty of 1950 and also of the requirements concerning the operation on the St. Lawrence dictated to the Authority by the International St. Lawrence River Board of Control and to Ontario Hydro by the Government of Canada through the office of the Department of Transport.

In 1953, Ontario Hydro entered into an interconnection agreement with Detroit Edison; the agreement contains a clause almost identical with the above-noted section 800. A similar interconnection agreement was entered into by Ontario Hydro in 1955 with Niagara Mohawk Company.

Technical Assistance

Iran

A private consulting firm from New York City, which had a contract with the Shah of Iran, sought Ontario Hydro and, as agent for the Khuzestan Water and Power Authority, entered into a contract with it for the provision by Ontario Hydro of a team of specialists to commission a generating station being built on the Dez River in Iran in the province of Khuzestan. The team's work included the training of Iranians to

operate and maintain the station. The contract was signed by the Chairman and Secretary of Ontario Hydro, with corporate seal attached, and provision was made in the contract for its assignation by the private firm to the Khuzestan Authority. A term in the contract was that its interpretation was to be according to Iranian law.

With the completion of the task this year, Ontario Hydro is now about to enter into another agreement to provide expert assistance in the future if necessary. This agreement, negotiated by the Director of Operations of Ontario Hydro, will be signed by the Chairman and Secretary of Hydro. There is presently a debate going on in Iran whether the agreement will be signed by the Managing Director of the Khuzestan Authority, who is also the Governor-General of the Province, or by the Minister of Power of the central government of Iran.

Ghana

Ontario Hydro has entered into an agreement with the Volta River Authority to provide for the Akosombo Dam the same services as they provided in Iran. The agreement, negotiated by the Director of Operations of Hydro, was signed by the Chairman and Secretary of Hydro.

Nigeria

The Niger Dams Authority would like Ontario Hydro to do the same thing for their plant at Kainji. The External Aid Department of Canada may be paying for these services and at present there is discussion whether the Director of Operations will have to deal through, or report to, the Canadian High Commissioner in Nigeria or whether he can, as he did in Iran and Ghana, deal directly with the Authority.

India

Ontario Hydro has an agreement with the Atomic Energy Commission of Canada to send a team to commission a nuclear generating station at Rana Satrap in Rajasthan, India. Ontario Hydro is presently training 35 engineers from India at their Nuclear Training Centre near Deep River. With respect to India then, Hydro deals through and is paid by A.E.C.

Department of Transport

Person Interviewed: R. H. Humphries, Executive Director of Services.

The following pieces of legislation were turned up and Mr. Humphries was then asked as to their origin, that is, whether the legislation was enacted pursuant to any agreement entered into by the province.

The Highway Traffic Act

Regulation 227, Section 10

This Section provides for exemptions from registration in Ontario of specified commercial motor vehicles operating in particular areas and modes. The section begins:

Every commercial motor vehicle,

- (a) that is registered in a reciprocating state of the United States of America that grants exemptions for commercial motor vehicles similar to the exemptions granted by this Section . . .

Mr. Humphries refers to this as 'mirror reciprocity'. No agreement between the province and reciprocating state is necessary. Mr. Humphries explained that he would merely write his counterpart in a particular state informing him of Ontario's legislation and asking whether that state would care to have their residents enjoy such privileges. If the state legislature enacts similar legislation its residents automatically become entitled to the exemptions provided by Ontario legislation.

Section 12

This Section provides that the requirements for registration in Ontario are not applicable to a motor vehicle owned by a person who does not reside or carry on business in Ontario for longer than,

- (a) six months, if the person is resident in another province, or
- (b) three months, if the person is resident in one of the United States, if the owner is resident in a jurisdiction that grants similar privileges to Ontario residents.

This is another example of 'mirror reciprocity'. The Section resulted from a conference of the Association of Motor Vehicle Administrators. The Association has representatives from provinces and states, holds meetings, regional and national, and conducts workshops. The representatives cannot agree that their jurisdictions will accord privileges to residents of other jurisdictions represented at the various meetings but they can, and do, return from the meetings with recommendations for particular pieces of legislation.

Regulation 230, Section 113

Section 113 provides for reciprocal suspension of licences in the case of unsatisfied judgments against residents of reciprocating states and provinces. Section 113(2) reads:

The Lieutenant-Governor-in-Council, upon the report of the Minister that a state or province has enacted legislation similar in effect to subsection 1 . . . may declare that the provisions of subsection 1 shall extend and apply to judgments . . . against residents of Ontario by any court . . . in such state or province.

Mr. Humphries noted that in this area he would write his counterpart in another state, inquire concerning their legislation and inform him of Ontario's legislation. If that state enacts similar legislation, then Humphries would notify the Minister who would obtain the necessary Order-in-Council declaring such state entitled to the benefits of Ontario's legislation. Again, no agreement is necessary.

Regulation 221, Section 6

This Section provides that the Registrar may record demerit points for a conviction in another province or state. This provision did not arise

under an agreement to punish an Ontario resident on behalf of another jurisdiction but is rather a unilateral attempt by the province to control its own drivers wherever they may be driving.

Motor Vehicle Accident Claims Act

Section 3

This Section requires the owner of a motor vehicle to produce, on request, evidence of insurance or payment of the prescribed uninsured motor vehicle fee. By subsection (4) the Section is made inapplicable to vehicles registered outside Ontario. This exemption was not provided pursuant to any agreement but was a unilateral act necessary to the tourist trade.

The Department does have reciprocity agreements with its counterparts in all other provinces of Canada save Quebec and Newfoundland. Such agreements arose out of the Canadian Conference of Motor Transport Authorities. The Conference, which meets once a year, seeks uniformity in licensing, insurance and equipment requirements. The agreements are signed by the Minister of Transport for Ontario and the appropriate Minister in the other province.

Section 23

This section provides for payment out of the Claims Fund to persons injured in a motor vehicle accident and unable to recover, who reside out of Ontario but in a jurisdiction which provides similar relief to Ontario residents. Again no agreement was necessary and if the person claiming can show similar legislation in his state available to Ontario residents he will be automatically entitled to relief under the Act. This, then, is another example of mirror reciprocity.

Footnotes

¹Interview with Gerard Pelletier, *Toronto Telegram*, May 4, 1965.

²D. P. O'Connell, *International Law*, 1965, p. 211.

³A.J.I.L., Vol. 29 (1935), Supp., p. 667.

⁴U.N. Document A/CN, 4/63 (1953).

⁵*Ibid.*, p. 101.

⁶*Ibid.*, p. 101.

⁷U.N. Document A/CN, 4/101 (1956).

⁸McNair, *The Law of Treaties*, 1961, p. 37.

⁹U.N. Document A/CN, 4/63.

¹⁰*Ibid.*, p. 139.

¹¹U.N. Document A/CN, 4/101.

¹²*Ibid.*, p. 118.

¹³*Ibid.*, Article 2, Draft Code.

¹⁴Hall, *International Law*, 1917, pp. 24-25.

¹⁵Brierly, *The Law of Nations*, 6th ed., 1963, p. 128.

¹⁶*Ibid.*, p. 137.

¹⁷*Arrow River v. Pigeon Timber Co.*, (1932) S.C.R. 495.

¹⁸*A.-G. for Canada v. A.-G. for Ontario*, (1937) A.C. 326, 347-348.

¹⁹Hans Kelsen, *Principles of International Law* (1952), p. 323.

²⁰Halsbury, *Laws of England* (1954), vol. 7, p. 286.

²¹Oppenheim, *International Law*, vol. 1 (1957) pp. 882, 887.

²⁰(1937) A.C. 326, at 349-350.

²¹*In re Regulation and Control of Radio Communication in Canada* (1932) A.C. 304.

²²*In re Regulation and Control of Radio Communication in Canada* (1932) A.C. 304.

²³*A.-G. for Canada v. A.-G. for Ontario* (1937) A.C. 326, at 349.

²⁴(1932) A.C. 304, p. 312.

²⁵(1937) A.C. 326, p. 350.

²⁶9 & 10 Vict., c. 22.

²⁷9 & 10 Vict., c. 23.

²⁸9 & 10 Vict., c. 94 (*Enabling Act* of 1846).

²⁹12 & 13 Vict., c. 29.

³⁰Edward Porritt, *The Fiscal and Diplomatic Freedom of the British Overseas Dominions* (Oxford, 1922), pp. 2-3.

³¹Edward Porritt, *op. cit.* p. 57.

³²13 & 14 Vict., c. 3.

³³Edward Porritt, *op. cit.*, p. 98.

³⁴*Ibid.*, p. 168.

³⁵*Ibid.*, p. 184.

³⁶*Ibid.*, p. 191.

³⁷Statutes of Canada, 57 & 58 Vict. c. 2.

³⁸Edward Porritt, *op. cit.*, p. 195. (Perhaps a similar communique by the federal government to the provincial governments might now be in order.)

³⁹Quoted by R. B. Stewart, *Treaty Relations of the British Commonwealth of Nations*, 1939, p. 233.

⁴⁰Maurice Ollivier, *Colonial and Imperial Conferences*.

⁴¹(1932) A.C. 304.

⁴²(1916) 1 A.C. 566.

⁴³Maurice Ollivier, *op. cit.*, Vol. III, p. 137.

⁴⁴C.S. 1939 Ch. 22.

⁴⁵W. P. M. Kennedy, 'The Office of the Governor-General of Canada', (1947-48) 7 U. of T. Law Journal 474.

⁴⁶*Toronto Telegram*, May 4, 1965.

⁴⁷*B.N.A. Act*, sec. 58.

⁴⁸*B.N.A. Act*, secs. 59 & 60; and see remarks of Duff, C.J., in the *Labour Conventions* case noted in Appendix II.

⁴⁹D. P. O'Connell, *op. cit.*, p. 224.

Footnotes—Appendices

¹(1936) 3 D.L.R. 673; 1937 A.C. 326.

²(1937) A.C. 326, p. 348.

³*Ibid.*, p. 352.

⁴(1936) S.C.R. 461, p. 535.

⁵*Ibid.*, p. 476.

⁶*Ibid.*, p. 488.

⁷*A.-G. Ont. v. Scott* (1956) 1 D.L.R. (2nd) 433.

⁸R.S.O. 1950 c. 334.

The Constitutional Competence Within Federal Systems for International Agreements

Professor Edward McWhinney

May, 1966

This paper was originally published in the journal
Canadian Legal Studies, vol. 1, May, 1966.

From examinations of a number of examples cited on behalf of the province of Quebec, Professor McWhinney concludes that "on a practical level, a lot of the supposed problems raised by Quebec's tentative ventures into trans-national governmental and commercial operations are seen not really to exist at all."

The Constitutional Competence Within Federal Systems for International Agreements

The controversy over the constitutional powers of the provinces, within the Canadian federal system, as to international agreements has so far been conducted on a rather abstract, doctrinaire basis. It does not seem to have had practical consequences for Canada at the International Law level. What scientific legal discussions we have entered into so far have been concentrated on the rather limited issue—going to purely internal, municipal law questions—of the constitutional competence of the Dominion and of the provinces respectively to implement treaties, on the assumption that such treaties have been validly entered into by the Dominion in the first place. This is the nub of the extended debate in Canada over the *Labour Conventions* decision of the Privy Council of 1937. Passing over as irrelevant for present purposes, the arid reasoning by which the Privy Council arrived at that decision, it is impossible today not to be a little amused by the uncontrolled extravagance of some of the criticism with which the *Labour Conventions* decision was first greeted in Canada. For in effect, the *Labour Conventions* case held that where, in the absence of a treaty, a particular head of subject matter would come within provincial legislative powers, the Dominion could not, simply by making a treaty, *ipso facto*, acquire legislative power over that matter: the Dominion, in such case, to secure constitutional implementation of the treaty within Canada, would have to obtain any necessary provincial co-operation by way of provincial legislation. The *Labour Conventions* decision thus represents one polar extreme of federal constitutional doctrine, in marked contrast to Mr. Justice Holmes' sweeping, nationally-oriented, treaty-implemented power, adumbrated in his "migratory birds" case opinion, for the United States Supreme Court in 1920. Whatever else it may have done, however, the *Labour Conventions* decision of the Privy Council has not, *per se*, constituted a "disaster" for Canadian federalism or "made the conduct of a rational Canadian foreign policy impossible", as was suggested by certain Canadian commentators in the late 1930's and thereafter. Indeed, looking back, it can be said that no single example has ever been cited, in the years since the *Labour Conventions* decision was first handed down, where its rationale has presented any practical difficulties, or even mild inconvenience, in the conduct of Canada's foreign relations by the Dominion government. On the practical, empirical level, it has proved perfectly possible for Canadians to live with the *Labour Conventions*

decision; and so the purely abstract, *a priori*, conclusions of constitutional doom and gloom of the late 1930's have been amply dispelled by the record of events since that time.

For the record, let me note here that the Federal Constitutional Court of West Germany, in 1957, was seized with an identical problem to the *Labour Conventions* fact-situation, in the famous *Reichskonkordat* case.¹ The German judges deciding the *Reichskonkordat* case in 1957, and for that matter also counsel arguing the case before them, were acquainted with the United States "migratory birds" decision and the Canadian *Labour Conventions* decision, and they were thus aware of the twin extremes of doctrinal position as to federal constitutionalism represented by these two cases. Nevertheless, for its own decision, the German Court consciously preferred the *Labour Conventions* rationale. The German Court reasoned that, on a balance of the possible inconveniences presented by any such ruling to the practical conduct of German foreign policy, and of the countervailing political advantages of any such ruling in terms of encouraging and strengthening Länder (provincial) authority in a pluralistic federal system, the provincially-oriented rationale of the *Labour Conventions* decision was the correct constitutional resolution of the problem for West Germany. And so it has been, in West Germany, that the *Reichskonkordat* decision of 1957 which like the *Labour Conventions* decision, was alleged, after it had been handed down, to be quite incompatible with maintenance of a strong and effective German foreign policy, has proved to be quite capable of being lived with, thereby confounding the more dismal prognostications of its original critics.

There was a time, particularly in the mid-1950's, after Lord Wright's revelation of his own originally dissenting voice in the actual Privy Council voting line-up in 1937 in the *Labour Conventions* case, and after some related disclosures of the casually sloppy methods whereby the final Privy Council majority was reached—when the *Labour Conventions* decision looked as if it would be overthrown by the Canadian Supreme Court. I assume that more recent political developments in Canada, and the renewed strongly centrifugal trends in favour of the provinces, render any such development politically impossible under present conditions. This being so, the emphasis today has moved away from treaty-implementation (the constitutional implementation, in internal, municipal law terms, of a validly concluded international agreement), to treaty-making (the question of the constitutional power, within the Canadian federal system, validly to conclude an international agreement). For two possibilities exist as to treaty-making in a federal system. Either the federal (in Canada's case, Dominion) government has the sole power to conclude treaties whatever the respective powers of the federal government and of the member-states or provinces as to legislative implementation of those treaties; or else the competence to conclude treaties must be divided between the federal government and the member-states, according as (and corresponding to treaty-implementation power after the

Labour Conventions decision) the subject matter of the treaty, in the absence of the treaty, would be divided between federal government and member-state or provinces. Unlike the issue of treaty-implementation which raises purely internal, municipal law questions, which are no direct legal concern of other countries (except, as a practical matter, in terms of their hunches as to the political chances of such treaties being acted upon), the issue of treaty-making necessarily affects international law questions of concern to other countries which might wish to conclude treaties with Canada. A sustained argument in regard to this question of treaty-making has been advanced on behalf of the province of Quebec; and it is supported by a number of comparative law references—variously to West Germany, Switzerland, the Soviet Union, and some of the “new” federal systems of Asia and Africa. I am rather less impressed by these comparative law citations, which too often rest on the “law-in-books” of abstract constitutional texts, without regard to the “law-in-action”. In the case of West Germany, for example, the most recent (1965) instance of an attempt at independent treaty-making power on the part of a Land (province)—the Niedersachsen-Vatican Konkordat, as a matter of “law-in-action” finally accorded completely with classical federal constitutional law notions. For although the government of the Land of Niedersachsen was of the opinion that it had plenary constitutional powers to conclude a treaty (Konkordat) with the Vatican, and in fact deliberately limited itself to a courtesy “for your information only” notification to the West German federal government of the fact of the Konkordat, the Vatican itself submitted the text of the Konkordat to the West German foreign ministry for approval and endorsement; and the West German federal government, against the constitutional views of the Land of Niedersachsen, in fact exercised what it clearly considered to be its constitutional right to endorse the Land agreement with the Vatican.

A number of other examples cited on behalf of the province of Quebec are less examples of treaties than of species of international or transnational agreements other than treaties.

I take it that a treaty is merely one species of international agreement whose legal significance is that it brings into play particular international law consequences not necessarily applicable to the other species of international agreements. Thus a treaty would give a right, in the event of any default to its terms, to any co-signatory thereby prejudiced to take appropriate measures—for example, at the diplomatic level, in the United Nations, in the World Court if applicable—to ensure proper compliance. Again, a treaty, by definition, is concluded between nation-states; where other forms of international agreements might be concluded, for example, between a nation-state on the one hand and a private corporation or company in another nation-state; or between two government corporations in different nation-states; or between two private corporations in different nation-states. Examples of such international or transnational agreements, being less than treaties—perhaps international “non-

treaties", if I may borrow a term from the Theatre of the Absurd—would be the recent agreement between Renault (a property of the French government), and the Société Générale de Financement (a provincially-owned investment corporation of the province of Quebec) granting the latter a licence to manufacture Renault cars in Canada; or agreements between governmental forest fire-fighting agencies of a Canadian province and of an American state on common fire control and prevention measures; or similar agreements as to joint road-building projects, as between a Canadian province and an American state; or even agreements between a Canadian province and individual American states as to the best commercial use of a river flowing (so far as Canada is concerned) wholly within the one Canadian province. I cannot really see what legal concern such agreements can be of the Dominion government; and I incline to the same opinion in regard to provincial agreements with foreign companies granting them powers of exploration and development of so-called "off-shore" oil rights, at least where such agreements do not impinge on federal defence and navigation interests. Of course, as international "non-treaties", such international agreements as these afford rather less protection, at law, than does the category of "treaties": I take it that, apart from the limited *parens patriae* protections that any one nation-state might invoke on behalf of its own citizens (including private corporations), the effective recourse would be no more than the ordinary legal remedies through the ordinary courts. And even these, presumably, would be qualified by the rule, which I have no doubt that Canadian courts would borrow from American constitutional precedents, that member-states (provinces) of our federal system cannot be directly sued by foreign states in our courts.

In the end, therefore, foreign states or instrumentalities seeking to do business with Canadian provinces by other than the more direct, treaty route, must do so at their own risk and with a certain awareness that they will be receiving somewhat less than the full range of legal protections and safeguards that they would obtain by seeking to make a treaty with Canada. If, however, they wish to proceed in that way and deal directly with the provinces or provincial authorities in matters otherwise within provincial competence, that is their own business and that of the provinces concerned, and certainly not any business of the Dominion.

By the same token, I cannot see why the Dominion should be upset if Quebec or any other province should wish to make cultural or cultural exchange agreements directly with other countries, as Quebec has in fact done with France. The essence of such agreements is that they rest on goodwill, and mutual, reciprocal benefit, for their effectiveness: one does not go to law over them. I take it that France and Quebec concluded their recent (1965) agreement because of their common interest in a cultural matter in regard to which the Dominion seemed to have been either aloof and disdainful, or else deplorably slow to act. Similarly, in the absence of a cultural exchange agreement between Canada and the Soviet Union (paralleling the successful Soviet-United States cultural

exchange agreement which has existed now for a number of years), it is possible that the province of Ontario or other provinces whose universities and advanced institutes have special scientific and cultural interests in this particular area, might wish to take the initiative and to fill the gap brought about by Ottawa's inaction. (Ontario might logically also wish to conclude its own cultural exchange agreement with France, in view of Ottawa's patent inaction in this area.)

Ottawa officials blame intransigent political pressure from Quebec for their own lack of initiative in the area of Canadian-Soviet cultural relations; and no doubt Ottawa blames English-speaking Canada for the Dominion's like failure to conclude a cultural exchange agreement with France. In either case, provincial action on behalf of provincial needs seems both rational and justified, and raises no particular problems of international or constitutional law affecting the Dominion. For it would be absurd if the bicultural premise or *grundnorm* of Canadian federalism were to stultify any form of action, whether Dominion or provincial, in areas of obvious interest and concern for us all.

And so, on a practical level, a lot of the supposed problems raised by Quebec's tentative ventures into trans-national governmental and commercial operations are seen not really to exist at all. Further, other provinces would seem to have similar interests to Quebec in developing such operations outside their own frontiers, and seem to have done so, in the past, on numerous occasions, without as yet raising any particular international or constitutional law problems. Here, once again, as in many other areas of the current Canadian constitutional "great debate", when one ceases to worry about the old-fashioned, abstract and theoretical questions of where sovereignty lies and whether it is divisible in any sense, and when one concentrates on actual problem-solving, there may be a good deal more common interest, and a good deal more flexibility and room for give-and-take, than one had heretofore suspected on a basis of purely *a priori* constitutional positions.

Addendum

On November 17th, 1965, Canadian External Affairs Minister Paul Martin announced that Canada and France had "signed a general agreement designed to promote cultural, scientific, technical and artistic exchanges". (*Globe and Mail*, Toronto, November 18, 1965). The agreement is recorded in an exchange of letters between Mr. Martin and French ambassador to Canada, François Leduc, in which Mr. Martin notes that provincial governments will be free to make their own cultural agreements within the framework of the Canadian-French agreement: "The authority for the provinces to enter into such *ententes* will stem from the fact that they have indicated that they are proceeding under the cultural agreement and the exchange of letters of today's date, or from the assent given them by the federal Government". Mr. Martin's letter, it is also stated, "places on the French Government the responsi-

bility to inform the Canadian Government of such agreements with the provinces". (*ibid.*)

On November 24th, 1965, the Government of Quebec announced that it had signed a new agreement "designed to bring the French spoken in Canada closer to international French and to quicken the rate of artistic and scientific exchanges being promoted by the two governments". (*Globe and Mail*, Toronto, November 25, 1965). The agreement was signed in the Legislative Council chamber of Quebec, by French ambassador to Canada, François Leduc, and Quebec Minister of Cultural Affairs, Pierre Laporte, in the presence of consular officials of the United States and the United Kingdom. Ambassador Leduc was stated to have exchanged letters in Ottawa with Canadian External Affairs Minister Martin, before signing the document in Quebec City that same day. Quebec Minister Laporte announced that, in the preparation of the agreement, "close contact was maintained between the Quebec Minister of Federal-Provincial Affairs and Mr. Martin of Canada. We wanted to be sure, during the preparation stages, that our agreement would receive the assent of the Government of Canada with regard to its foreign policy". (*ibid.*)

Now while the "grand design" of the Department of External Affairs in Ottawa, in this matter of the Quebec cultural accord with France, seems clear, it is not so certain just what legal position the Government of Quebec has finally chosen. I take it that External Affairs in Ottawa view the full International Law power to conclude cultural agreements abroad as being vested in the Dominion alone; and they would also view the Dominion as having established, with the particular Canada-France agreement made on November 17, 1965, a model for conduct for the future, of a Dominion-established "umbrella" agreement, within whose framework and terms (but only within whose framework and terms) the province might be free to act as, in effect, delegate or agent of the Dominion. Quebec Minister Laporte's statements on the occasion of the signing of the Quebec-France cultural accord of November 24, 1965, do not go quite so far as that. There are some elements, in Mr. Laporte's announced position, of the Land of Niedersachsen's "courtesy", "for your information, only", notification to the West German federal government in the Niedersachsen-Vatican Konkordat affair.

On the facts of the Quebec-France cultural accord, as so far revealed, no International Law consequences seem to be contained in its concrete implementation; and so it would appear to come within the ambit of the general rule suggested above, that the provinces, in respect to subjects within their specific constitutional powers as defined in the *B.N.A. Act*, are fully competent to conclude, in their own authority, trans-national agreements not having international law consequences. The elaborate verbal juggling and polite by-play between Quebec and Ottawa, on the occasion of this particular provincial trans-national accord, would then be reduced to ordinary good manners and common-sense between parties to a federal state, not really dealing with matters of constitutional

competence. Exercise by a member-state or province of a federal system of its own constitutional powers, in such a way as deliberately to embarrass or frustrate the federal government in the conduct or exercise of its own federal powers may, if sufficiently flagrant, constitute a breach of federal comity and so might fail. The conceded initial constitutional power, in such a case, would fail because of the unconstitutional manner or mode of its actual user. But that is another story which merits examination in its own right under the well-known constitutional rubric of federal comity or federal fidelity (*Bundestreue*).²

Footnotes

¹The *Reichskonkordat* case is analyzed in detail in my *Constitutionalism in Germany and the Federal Constitutional Court* (1962), p. 46 *et seq.*, and in my *Comparative Federalism* (2nd ed., 1965), p. 36 *et seq.*

²See, in this regard, the discussion in the author's *Constitutionalism in Germany and the Federal Constitutional Court* (1962), p. 51 *et seq.*; and *Comparative Federalism, States' Rights and National Power* (2nd ed., 1965), p. 78 *et seq.*

The Legislatures and Executives Of The Federation

Dr. Eugene Forsey

October, 1966

The paper discusses in Dr. Forsey's own distinctive style the effect of the following problem areas on representation in the federal and Quebec legislatures and on the constitution: (1) Quebec's opting out of federal-provincial shared-cost programs, (2) the possibility of Quebec's opting out of the federal family allowance plan, (3) the official demand of the Quebec government that the federal government should, in Quebec, withdraw from the payment of flat-rate old age security payments, (4) co-existence of the Canada and Quebec Pension Plans, (5) the endowment of the Senate with large new independent powers, (6) the proposal from various quarters in Quebec to transfer large fields of jurisdiction from the federal Parliament to the Quebec Legislature.

The Legislatures and Executives Of The Federation

The Democratic Principle, The House of Commons And The Provincial Legislative Assemblies

At this late date, one would hardly suppose that this subject would need discussion. "Representation by population," in the House of Commons and in the provincial Assemblies, was one of the corner-stones of Confederation. Democracy, of course, was not. The franchise, in 1867 and for long after, though wide, was restricted. It is only since 1920 that all adult citizens have had the right to vote in Dominion elections. In some of the provinces, adult suffrage came a little earlier, in the province of Quebec only much later.

Representation by population has, of course, always been qualified. In the House of Commons, and in every provincial Assembly, the rural constituencies have been over-represented. In the *Dominion Redistribution Acts*, after each decennial census, there has been provision to prevent any province from losing seats in the House of Commons unless its proportion of the total population of Canada has fallen by more than a certain percentage; and the *British North America Act* of 1915 provided that no province should have fewer seats in the Commons than in the Senate. The original *British North America Act* also provided that the boundaries of twelve constituencies (then predominantly or largely English-speaking)¹ in the Quebec Assembly could not be changed except with the consent of the majority of the members from those constituencies. The Lieutenant-Governor was explicitly forbidden to assent to any such bill unless the Assembly had presented him with an Address certifying that this condition had been complied with. It is interesting to note that M. Lesage says this provision is one of the causes of his defeat in the recent Quebec election.

The Parliament of Canada has, of course, the legal power to widen or narrow the Dominion franchise in any way it pleases. It has also the legal power to throw overboard the principle of representation by population, either within any province or as between provinces. The Legislature of each province, likewise, has the power to widen or narrow the provincial franchise in any way it pleases, and the right to throw overboard the principle of representation by population. No one, however, seems to be proposing that the franchise should be narrowed, either for the House of Commons or the Assemblies; or that the principle of repre-

sentation by population should be dropped, either for the House of Commons or the Assemblies.

Until recently, there would have been very little more to say on this subject. Now, there is a great deal. Six things have brought about this change.

The first is the provision for any province to opt out of Dominion-provincial joint programs.

The second is the Quebec proposal that the province should be allowed to opt out of the purely Dominion family allowance plan.²

The third is what now appears to be the official demand of the Quebec Government that the Dominion should, in Quebec, withdraw from the payment of flat-rate old age security, and hand the whole thing over to the province.³

The fourth is the co-existence of the Canada and Quebec pension plans.

The fifth is the proposal, from various quarters in Quebec, to endow the Senate (the existing Senate, or, more probably, a drastically different one) with large, new, independent powers.

The sixth is the proposal, also from various quarters in Quebec, to transfer large fields of jurisdiction, in Quebec, from the Dominion Parliament to the Quebec Legislature.

Each of these calls for careful examination.

Quebec has already opted out of many of the joint programs, and wants to opt out of most or all of the rest. This has raised the question whether Quebec members of the House of Commons have any right to speak, let alone vote, on programs their province has opted out of. The further the opting out goes, the more insistently the question will be asked.

The answer seems to me to turn on the fact that the subject-matter of the joint program is, under the existing Constitution, provincial. The Dominion has a perfect right to legislate for grants-in-aid to approved provincial schemes; but the jurisdiction in which they operate is provincial. Any province can come in, any province can get out. The distribution of powers remains precisely where the *B.N.A. Act* (as interpreted by the Judicial Committee of the Privy Council) placed it. The provincial jurisdiction remains unimpaired, even if the province goes into the joint plan; the Dominion legislation providing grants-in-aid still applies to the whole country even if all the provinces opt out.

Quebec has a perfect right to opt out of any joint plan: it is merely resuming the full management of its own constitutional property. It has also a perfect right to stay in, or, having opted out, to opt in again. If it opts out, it has also a right to the money its people would have received under the joint plan if their province had stayed in, or the money they would get if their province opted in again. Whether the province gets the money as an unconditional grant from the Dominion Treasury or as a tax abatement is, in this context, immaterial. The people of Quebec would still, in effect, be paying their Dominion taxes, part of which,

under the joint plans, would have come back to them. If they now choose to have their own provincial plans, the same amount of money should still come back to them.

If this is so, then the House of Commons, legislating on the joint plans, will still be legislating for the whole country, still deciding how much the people of Quebec, as well as the other provinces, shall get, whether as conditional grants-in-aid, straight money compensation in lieu of grants-in-aid, or tax abatements. The Quebec members of the House of Commons will therefore have a perfect right to take their full share in deciding the terms of the joint plans, the size of the grants-in-aid and the conditions on which they will be made available, since these terms will settle not only the payments to the provinces which stay in the joint plans but also the payments to Quebec as well. Whether in or out of the joint plans, Quebec remains, legally and constitutionally, just as much a part of Canada as any other province, and its members in the House of Commons are entitled to exactly the same rights as those from other provinces.

The same principle applies to Quebec's opting out of the Dominion family allowance plan. Though this is a purely Dominion Act, the subject matter is, equally, Dominion and provincial. The Dominion alone, or Quebec alone, or both at the same time, can grant to Quebec families any money Parliament or the Legislature sees fit, and on any terms Parliament or the Legislature sees fit. If Quebec asks the Dominion to stop making grants to Quebec families, and to let the Quebec Government have the money the Quebec families would otherwise have got, and Parliament consents, this does not take away one jot from the power of Parliament, which remains perfectly free to resume making grants to Quebec families whenever it sees fit. The Quebec members of the House of Commons would, again, seem to have a perfect right to take their full share in deciding how large the family allowance payments in the other nine provinces should be, since this would determine how large the compensating payment (or tax abatement) to the Quebec Government should be. In effect, the legislation would still apply to the whole country, though its application in one province would be different; so the M.P.'s from all the provinces would be equally entitled to speak and vote on it.

In the third case, the purely Dominion flat-rate old age pension, both the Dominion and the province have jurisdiction, but if there is any conflict, provincial legislation prevails. Here, if any province chooses to act, any conflicting provisions of the Dominion Act simply cease to have effect in that province. Parliament does not lose any jurisdiction granted it by the Constitution; but a new set of conditions makes part of the jurisdiction inoperative as long as the provincial Act is in force.

If the Dominion then grants the Quebec Government, outright or as tax abatement, the money it would otherwise have paid Quebec's old people, then, though the Dominion Act will now apply only to the other nine provinces, the amount of the Quebec grant will depend on the

terms of that Act; and, again, the Quebec members of the House of Commons will, accordingly, be entitled to speak and vote on the same terms as those from the other provinces.

If the Dominion does not make a compensating grant to Quebec, the case is different, though, for reasons which will be discussed below in another context, it can be argued that the Quebec M.P.'s would still be entitled to take their full part in the decisions.

Fourth, there is the Canada pension plan. Here, Quebec has chosen to exercise its jurisdiction, and the Dominion Act has therefore no effect in Quebec. Again, Parliament has not lost any jurisdiction, but a new set of legal conditions makes part of its jurisdiction inoperative as long as the provincial Act remains in force. But in this case the province gets no Dominion money or services. The Dominion Act, directly and indirectly, applies only to the other nine provinces. So, as in the immediately preceding case, it would seem that the Quebec M.P.'s should have no say at all in any changes in the Dominion Act; but, again, for the same reasons which will be discussed below, it can be argued that they would be entitled to take their full part in the decisions.

None of the cases so far considered means any change in the *B.N.A. Act*. The two remaining cases would involve large, even fundamental, changes in that Act.

First, the proposals to endow the Senate with large, new, independent powers. The Senate already has an absolute veto over all Dominion legislation, and over all proposals for British Acts to amend the *B.N.A. Act*. This veto it has exercised, on the whole, very sparingly, though it did, in 1936, turn down one proposed constitutional amendment. But there is a tacit understanding that the Senate will not permanently block any legislation, or constitutional amendment, which the electors have plainly shown they want.

The proposed new powers for the Senate are, however, a totally different matter, especially as they are often coupled with proposals to transform the Upper House into an elected body, with half its members elected by "French Canada" and half by the rest of us.

What are the new powers proposed?

Here, it is not easy to be as specific as one could wish, since most of the proposals have something of the quality of ectoplasm. However, certain outlines seem to be visible.

First, the Senate would be given power to deal with "the right of minorities,"⁴ or "the representation and defence of the fundamental rights of the great cultural families which constitute our country, including the more or less inchoate family represented for the moment by what is generally called 'the third group.'"⁵ Apart from Professor Morin's specifying that the rights in question would include the educational rights of "the English minority in Quebec and the French minority in other provinces,"⁶ this is as near as we get to finding out which rights of which minorities would be covered. However, the important point for our immediate pur-

pose is that whatever minorities might eventually be specified, power over them would, apparently, be totally withdrawn from the House of Commons, and entrusted exclusively to the Senate.

Exactly the same would apply to "radio, television, discussion of constitutional amendments at the federal level,"⁷ and "approval of treaties".⁸

The Senate at present has, of course, no executive powers whatsoever. Under these proposals, however, it would have powers, undefined, over "the appointment of ambassadors and federal judges" (elsewhere, "of the high federal courts").⁹ One surmises that, as in the United States, the central executive would nominate, but the appointments would require a two-thirds vote of the Senate to become effective.

The proposals would deprive the House of Commons of its present share in the power to protect the educational rights of Protestant and Roman Catholic minorities under Section 93 of the *B.N.A. Act* and the corresponding sections of the *Manitoba, Saskatchewan and Alberta Acts* (perhaps no great matter, since the sections are probably dead already, for all practical purposes); of its power even to discuss whatever rights of whatever minorities were placed under the exclusive jurisdiction of the Senate; of its power even to discuss broadcasting, treaties, or diplomatic or judicial appointments; and of its power to remove (or force to the country) a Government whose treatment of such minorities, or whose broadcasting policy, or treaties, or diplomatic or judicial appointments it disapproved.

This is by no means all that the proposals would do to our Constitution. Other effects will appear when we come to discuss the suggested transfers of legislative jurisdiction from the Dominion to Quebec, and responsible government and the Cabinet system. For the moment, it is enough to say that the proposed new powers for the Senate would, beyond doubt, mean very serious changes in the whole balance of the Constitution; that they could not be brought about except by an amendment to the *B.N.A. Act* passed by the United Kingdom Parliament; that, by long-established constitutional usage, Parliament would not pass any such amendment except on Address by both Houses of the Parliament of Canada; that, by less long-established, but now firmly embedded, constitutional usage, no such Address would be even presented to either House at Ottawa except with the prior consent of all the provinces; and that it is scarcely conceivable that either the House of Commons or all the provinces would give the required consent.

We come now to the proposals for transferring large parts of the jurisdiction of the Parliament of Canada, in Quebec, to the Quebec Legislature. Here, again, it is not always possible to be as precise as one could wish; but this time certain outlines are plainly visible.

Professor Jacques-Yvan Morin has provided the clearest statements on the subject, though anyone who thinks the kind of thing he has said is peculiar to him should take a look at M. Gérin-Lajoie's speech to the consular corps of Montreal,¹⁰ or some of M. René Lévesque's speeches,¹¹ or M. Ryan's lecture at Trent University,¹² or, last but by no means least,

M. Daniel Johnson's statement to the Dominion-Provincial Fiscal Conference.¹³ The extent to which all these very different people sing to one clear harp in divers tones is amazing.

In effect, what all of them are saying is that Quebec should become something very close to a sovereign state, with exclusive jurisdiction over an enormous part of what now belongs to the Parliament of Canada, *and that it should at the same time retain its full representation in the House of Commons.*

In other words, the members of the House of Commons from the other nine provinces would not be able so much as to open their mouths on the numerous subjects formerly within their jurisdiction which would now have become the sole concern of the Quebec Legislature; but the members from Quebec would still have full voice and vote on subjects which had now become the sole concern of the other nine provinces. To give a concrete example: Quebec would have its own banking system, under the sole jurisdiction of its own Legislature, and of course the members of the House of Commons from the other nine provinces could have nothing to say about Quebec banks. But the Quebec members would still have full power to speak and vote on banking legislation for the other nine provinces. And this situation would repeat itself for subject after subject after subject.

The transfer of powers from the Parliament of Canada to the Quebec Legislature can be accomplished only by an Act of the British Parliament, on Address from both Houses of the Canadian Parliament, which latter would be passed only after all the provinces had consented. Once the people of the other nine provinces realize that what is included, it may be doubted whether their members of the House of Commons, and their provincial governments, would consent to any such heads-you-win, tails-I-lose, arrangement. They would be more likely to say that what's sauce for the Quebec should be sauce for the nine provinces' gander.

To this Quebec might make two replies.

First, Section 94 of the *B.N.A. Act*. Under that Section, the Parliament of Canada can make provision for uniformity of any or all of the laws relating to property and civil rights (which now, thanks to the Judicial Committee, include most of social security and labour legislation) in all the provinces except Quebec; and, once a provincial Legislature has accepted the Dominion Act, the jurisdiction passes absolutely to the Dominion. From this provision Quebec, in the Confederation negotiations, opted out, absolutely. The Section has never been used; but the Fathers of Confederation expected that it would be, on a large scale. No one has ever suggested that if it were, the Quebec members of the House of Commons should be debarred from taking the fullest share in the proceedings, even though the legislation could apply only to the other nine provinces. So if Quebec now sought to have jurisdiction over (for example) banking in Quebec transferred to the Quebec Legislature, leaving the Dominion *Bank Act* to apply only to the other nine provinces, why should Quebec members of the House of Commons be de-

barred from speaking and voting on that Dominion legislation? What's sauce for property and civil rights should be sauce for banking!

Second, Quebec might point out that there are Dominion Acts which apply specifically only to one province (for example, the *Newfoundland Savings Bank Act* and the *Quebec Savings Bank Act*); and that it has never been even suggested that members of the House of Commons from the other provinces should be debarred from speaking and voting on such legislation. If there came to be legislation which applied only to the provinces other than Quebec, why should Quebec members be debarred from speaking and voting on that?

To the first of the Quebec replies, the rest of the country might say: "Section 94 is a very special exception to the general rule that Dominion jurisdiction, as defined by the *B.N.A. Act* and the Courts, applies to the whole country. True, it is a much wider exception than the Fathers of Confederation intended. But it remains a very special exception. If you ask only for the transfer of a few, not very fundamental, powers, then the precedent of Section 94 might hold: the law takes no account of little things. But if you ask for the transfer of powers so numerous and so important that the jurisdiction of Parliament over the territory of Quebec becomes a mere shadow, that's quite another thing."

As most of the French Canadians who propose the numerous and important transfers, and most of the English Canadians who support them like to consider themselves advanced thinkers (though what they propose on this subject sounds more like "Back to 1860"), one might perhaps invoke the Marxist principle of the transformation of quantity into quality. Transfer unemployment insurance in Quebec to the Quebec Legislature, leaving the rest of Dominion jurisdiction intact, and the authority of Parliament is not seriously reduced; it is, in fact, simply put back where it was before 1940. The change might be, probably would be, very hard on the unemployed; it would injure Quebec workers and the country generally by reducing mobility of labour; it might have other undesirable effects; but it would not break Canada into two. Similarly with both types of old age pension. Transfer banking in Quebec to the Quebec Legislature, leaving the rest of Dominion jurisdiction intact, and the authority of Parliament is very seriously undermined. Transfer a whole series of powers, and the moment comes when the cumulative effect is to transform Canada from a nation into a cobweb, from a reality into a phantom: a pale ghost sitting crowned (or, in view of the republican propensities of a good many of the advocates of such changes, uncrowned) upon ruins; and to leave its people with no anthem but English and French translations of Heine's dirge:

Ich hatte einst ein schönes Vaterland:
Es war ein Traum.

(If I may venture an English translation.)

I used to have a splendid Fatherland:
It was a dream.

As to the other Quebec reply, about the *Newfoundland* and *Quebec Savings Bank Acts*, the rest of the country might say: "First, Parliament's power over savings banks extends to all the provinces; it has not abated one jot of that power; it has merely chosen not to exercise it in the other eight provinces. If the members from the other eight provinces want the power exercised there, they have only to say so; meanwhile, since the existence of savings banks in Newfoundland and Quebec undoubtedly affects banking in these provinces, and therefore in the whole country, the members from the other eight provinces may reasonably claim a right to speak and vote on such legislation. Second, the two *Savings Bank Acts* are highly exceptional and relatively unimportant; if the transfers of power were equally exceptional and equally unimportant, no one in the other provinces would be likely to bother about Quebec members speaking and voting on such exceptional and unimportant legislation affecting only the other provinces."

In other words, if the exceptions become the rule, if Quebec for most purposes, not just a few, separates itself from the rest of Canada in matters where it has hitherto not been separate, then its members of the House of Commons can scarcely expect to go on having their full say on a whole range of matters which, by Quebec's own desire, will have become none of Quebec's business. Quebec cannot opt out of most of Dominion business and still opt in on the control of the business it has opted out of.

Responsible Government and the Cabinet System

Ever since Confederation, the Dominion has had responsible government and the Cabinet system. So have all the provinces (though in Manitoba and British Columbia in the early days it was a rather weak plant). In the Dominion and every province, the nominal Executive (the Queen or her representative) acts only (except in very rare and extraordinary circumstances) on the advice of a Cabinet responsible, answerable, accountable, to the House of Commons or the Legislative Assembly. By custom, all the ministers must have a seat in Parliament or the Legislature, or must get one within a reasonable time; and if the Cabinet is defeated in the House of Commons or the Assembly, on a motion of censure or want of confidence, or on any motion which it considers of sufficient importance, it must either resign or make way for a new Government in the existing House, or else ask for a dissolution of Parliament or the Legislature and seek a new majority from the electors. In the two jurisdictions where there is an Upper House, the Dominion and Quebec, the Cabinet is not responsible to that House, and a defeat there does not entail either resignation or a request for dissolution, though a Government defeated in the Upper House could, of course, ask for dissolution in the hope that the electors would give it a fresh majority so large as to induce the Upper House to give way.

No one of any consequence has proposed that the Dominion should give up responsible Cabinet government. Several people of importance in Quebec, notably M. Daniel Johnson and M. Gérin-Lajoie, have proposed that the province should change to a presidential system, apparently on the model of the United States, or perhaps of Gaullist France. As the provincial Legislature (that is, the Lieutenant-Governor, the Legislative Council and the Legislative Assembly) has full power to amend the Constitution of the province in any way, "except as regards the office of Lieutenant-Governor," there is presumably no legal obstacle to such change, provided the Lieutenant-Governor's legal powers (such as the summoning, proroguing and dissolving of the Legislature) are left untouched, and provided the Lieutenant-Governor assents to the necessary Bill or Bills, and provided the Dominion Government does not instruct him to reserve the Bill or Bills, and (if he does not refuse assent, and is not instructed to reserve) provided the Dominion Government does not disallow the Act (or Acts) within one year of its (or their) arrival at Ottawa. It is exceedingly unlikely that the Lieutenant-Governor would refuse assent, or that the Dominion Government would intervene. The Courts would, of course, nullify any legislation taking away any of the Lieutenant-Governor's legal powers, as they did the *Manitoba Initiative and Referendum Act*.¹⁴ But there would appear to be nothing to prevent Quebec from enacting that, for example, no minister should have a seat in the Legislature, or that the ministers should not have to resign, individually or collectively, or ask for a fresh election, on defeat in the Assembly.

For the Dominion, the only questions that arise affecting responsible government and the Cabinet system have to do either with the proposed new powers for the Senate, or with the transfer of large powers from the Dominion Parliament to the Quebec Legislature.

Take, first, the proposed new powers for the Senate.

To begin with, would legislation in respect to the rights of minorities, radio, television, constitutional amendments, and approval of treaties have to be initiated by the Senate itself, without regard to the Cabinet, or would the Cabinet draft the legislation and submit it to the Senate for approval, amendment or rejection?

Second, if the Senate rejected legislation in these fields which the Cabinet considered, or insisted on passing legislation which the Cabinet considered disastrous, what would the Cabinet do? If it were a case of the Senate rejecting Cabinet legislation, would the Cabinet resign, or ask for a dissolution of Parliament, or would it merely have to put up with the Senate's decision? If it were entitled to get a dissolution of Parliament, and if it won the ensuing election, would the Senate have to give way, or could it still impose its veto? If, on the other hand, the Senate insisted on passing legislation the Government objected to, would the Cabinet have to advise the Governor-General to give the royal assent? If the Cabinet could refuse to give such advice, what would become of the Senate's power? If the Cabinet were obliged to advise assent, willy-nilly,

what would become of its responsibility to the House of Commons? Suppose the Cabinet advised assent, and the House of Commons censured it for doing so? The problems which would arise are a good deal like those which would result from the successful grafting of the head and neck of a giraffe on the chassis of a dachshund.

And the situation would be compounded if the Senate became a fifty-fifty affair, and if large parts of the jurisdiction of Parliament, in Quebec, were transferred to the Quebec Legislature. We should then have a large body of Senators from Quebec in a position to, for example, defeat a treaty which affected only the other nine provinces, even though the people of those provinces, as represented by their members in the House of Commons (or even by their provincial governments) ardently wanted to have the treaty come into effect. How would the other nine provinces relish having broadcasting under the exclusive control of the Senate, especially a fifty-fifty Senate? Nor does this by any means exhaust the possibilities.

And what about the power over appointment of ambassadors and judges, especially the latter? Professor Morin says the power would apply to "federal judges", or "judges of the federal high courts." Does this mean only the Supreme and Exchequer Courts of Canada, or does it include judges of the superior, district and county Courts in all the provinces, or only in the nine? Or what? It seems unlikely that Professor Morin, or anyone who shares his views, means the second. If he means the third, then Quebec Senators would have a large say, perhaps a decisive say, in the appointment of judges in most of the Courts of the nine provinces, while the Senators from the nine provinces would have no say whatever in the appointment of Quebec judges.

The whole thing is enough to make one's head swim. Most decidedly no such scheme could be entertained for a moment until it had undergone the most rigorous and detailed examination. Even then, of course, it could not be brought into effect legally, except by an Act of the British Parliament, on Address from both Houses of the Canadian Parliament, and by unanimous consent of the provinces. The prospects of such consent being given, once the consequences had been made clear, seem remote.

Finally, under this head, there is the question of the effect on responsible government and the Cabinet system of the transfer of large parts of Dominion jurisdiction in Quebec from the national Parliament to the Quebec Legislature.

Under Professor Morin's proposals (which, it must be repeated, are not substantially different from those of a good many other people in Quebec, including M. Daniel Johnson), Parliament's powers over Quebec would be reduced to defence, interprovincial trade and transport, monetary policy, the tariff, broadcasting, unemployment insurance, equalization grants to the poorer provinces, and a small part of external affairs.¹⁵ (M. Claude Ryan describes his not-so-different proposals in his Trent lecture, as a "minimum program".)¹⁶ This "minimum program"

would mean that only seven departments, at most, would have any jurisdiction over Quebec: External Affairs, Labour (the powers of both in respect to Quebec would be minimal), Finance, Defence, Trade and Commerce, Transport and whatever department is assigned to deal with broadcasting. Would Quebec be willing to have its representation in the Cabinet cut from nine to seven? Would the other provinces be content to see all seven of these portfolios go to Quebec ministers? Would Quebec claim a right to have a minister from Quebec heading a department which dealt solely with the other nine provinces? Would the other nine provinces admit such a claim? Would Quebec consider it had a right to the prime ministership, even though it had separated itself from Canada for most purposes? Would the other nine provinces admit that claim? Whether or no, and whatever the number of ministers from Quebec, what would such ministers do when the Cabinet was discussing matters which affected only the other nine provinces? What would a prime minister from Quebec do? Would they withdraw? Would they remain, but be reduced to silence, either by law or by a self-denying ordinance?

Besides, some of those who propose these fancy schemes, notably M. Lesage, M. Johnson, and the two Quebec trade union federations and the Catholic Farmers' Union, want to have the Government of Quebec consulted on matters which are, even under their proposals, left to the central power: for example, defence, external trade, and fiscal and monetary policy.¹⁷ Why a provincial government (elected by provincial constituencies, on a provincial franchise, on provincial issues, to discharge only provincial responsibilities), should be allowed to horn in on national decisions, no one can satisfactorily explain, except, of course, by saying that the Government of Quebec is the Government of one of the two "nations" which inhabit, and divide, the territory still known as "Canada." But the only logical issue of the two-nations theory is the total disappearance of any central power whatever, to be replaced either by purely diplomatic relations, such as those between Great Britain and France, or by certain very limited common organisms established by treaty. So that horse won't run; not in this race.

The voice of Quebec in the Government and Parliament of Canada belongs to the ministers, senators and members of the House of Commons from that province. If the Legislature of Quebec takes over most of their legislative functions, and the Executive Government of Quebec much of the rest, then the Quebec ministers in the Dominion Cabinet, the Quebec senators and members, will be left with little except the power to interfere in matters which, by their province's own decision, will have become none of their business. M. Daniel Johnson seems to think this would lead to "harmony" between Quebec and the rest of the country. Anyone who believes this can believe anything.

Proposals such as we have just been considering really amount to saying that Quebec can be in and out of Canada at the same time; that it can be almost independent, and at the same time keep a large, perhaps decisive, share in power in the country it has become almost independent

of. These proposals are plainly designed to give Quebec as many as possible of the advantages of independence with as few as possible of its disadvantages. By the same token, they would give the rest of Canada just the reverse.

These proposals are often presented to us as at least better than outright separation, or better than Associate States. They are not. They would in fact be far worse. The Saint Jean-Baptiste Society's scheme for Associate States, ramshackle and unworkable as it is, would allow the rest of the country, "English Canada" (though it would contain about a million French Canadians), to run its own affairs, apart from those entrusted to the weird and wonderful common organisms hazily sketched out by the Society. Two totally separate states would, from this point of view, be even more satisfactory.

The General Issue: Majority Rule and Minority Veto

What has already been said under the specific heads seems pretty well to dispose of this "general issue." If there is to be anything more than the kind of counterfeit Canada which M. Daniel Johnson, and those who share his views on this matter, would give us, then there is really no choice but to decide which matters are national, and must therefore be entrusted to a national Government and Parliament, without any power of veto for any group, and which matters are provincial, and must therefore be entrusted to provincial governments and legislatures, without any power of veto for any group. There may, within limits, be special provisions to meet the particular needs of particular provinces, as there are now, in the *B.N.A. Act*, for most of the provinces. These must be guarantees for individual freedom and for certain minority rights. This, in effect, is what the Fathers of Confederation provided for. Some of the details may need revision, but the general plan does not. Any province, or any group, which wants to combine majority rule and minority veto is asking for dry water, boiling ice, sour sugar, stationary motion.

Perhaps "the conclusion of the whole matter" has been best stated by Mr. Stan McDowell, of the *Ottawa Journal's* Quebec Bureau, in a brilliant play on the various, and slippery, meanings of the word "nation": "If a nation (that isn't a nation) doesn't try to become a nation (that is a nation) there is really no problem in having two nations (that aren't nations) in one nation (that is a nation). But if it does, the 'nation one and indivisible' is fated to become two, and invisible."

Footnotes

¹*British North America Act*, 1867, section 80, and schedule 2. The constituencies were: Pontiac, Ottawa and Argenteuil, north of the Ottawa River, and Huntingdon. Missisquoi, Brome, Shefford, Stanstead, Compton, Wolfe and Richmond, Megantic, and the Town of Sherbrooke. The County of Ottawa was about 48 per cent English-speaking, Shefford 32 per cent, Megantic 38 per cent. The other nine seats had large, usually very large, English-speaking majorities, of the order of 71 to 92 per cent.

²*Declaration de l'honorable Daniel Johnson à la quatrième réunion du Comité du régime fiscal*, Ottawa, 14 et 15 septembre 1966, p. 8 (hereinafter cited as Johnson, *Declaration*); *Ontario Official Summary of the Brief of the CNTU, the Quebec Federation of Labour and the Catholic Farmers' Union to the Quebec Constitutional Committee*, p. 13 (hereinafter cited as *Triple Brief*).

³Johnson, *Declaration*, p. 8.

⁴Jacques-Yvan Morin, *Canadian Forum*, February, 1965, p. 257; Claude Ryan, *Journal of Canadian Studies*, August, 1966, p. 10.

⁵Ryan, *loc. cit.*

⁶*Canadian Forum*, June, 1964, p. 65.

⁷Morin, *Canadian Forum*, February, 1965, p. 257.

⁸*Ibid.*

⁹Morin, *Cité Libre*, juin-juillet 1964, p. 7; *Canadian Forum*, February, 1965, p. 257.

¹⁰*Le Devoir*, 15 avril 1965, p. 5.

¹¹See, for example, *Le Devoir*, 8 juin 1963, p. 8; 24 mars 1964, p. 13; 11 mai 1964, p. 1.

¹²Ryan, *Journal of Canadian Studies*, August, 1966, p. 11.

¹³Johnson, *Declaration*, pp. 8-9, 19-20.

¹⁴Judgment of the Judicial Committee In *Re Initiative and Referendum Act* (1919) A.C., 935.

¹⁵Morin, *Canadian Forum*, June, 1964, p. 65; February, 1965, p. 257.

¹⁶Ryan, *Journal of Canadian Studies*, August, 1966, p. 13.

¹⁷Hon. Jean Lesage, *Le Devoir*, 29 septembre 1964, p. 1; *Triple Brief*, p. 11; *Summary of Triple Brief*, *Le Devoir*, 29 septembre 1966, p. 1; Johnson, *Declaration*, pp. 19-20.

Constitutional Monarchy and the Provinces

Dr. Eugene Forsey

October, 1965

Some Canadians have an “amiable but fuzzy” desire to help the French Canadians by recommending that Canada become a republic. Dr. Forsey contends that a factual look at Canada’s political and constitutional history indicates that this theory is a misconception. Moreover, he also disposes of six other arguments for a republic in Canada.

Constitutional Monarchy and the Provinces

The first thing to get clear is that the provinces are not themselves "monarchies". They are parts of a constitutional monarchy, Canada. The Queen is Queen of Canada, not Queen of Ontario, Queen of Quebec, Queen of British Columbia, etc. She is, of course, Queen *in* all these provinces. But her title is "Queen of Canada", and it is as such that she is Queen *in* each of the provinces.

This fact is important, because it has been suggested that Quebec, for example, might be allowed to become a republic, with a president, but still remain part of something called "Canada". The analogy, presumably, would be with India, Pakistan and the other republics which remain part of the Commonwealth. But the analogy is false. India, Pakistan and the other republics within the Commonwealth are distinct political nations; each of the provinces of Canada is *part* of *one* political nation. No Canadian province could become a republic without ceasing to be part of the one political nation, Canada.

To propose, therefore, that any one province should be allowed to become a republic is to propose secession, separatism and total independence for that province.

If the people of any province favour republicanism, but want to remain part of Canada, then the only thing they can do is try to make *Canada* a republic.

The second thing to get clear is that Canada is a constitutional monarchy by *deliberate choice*. It is not by accident, nor from absent-mindedness, or coercion, or the fear of coercion, that the *British North America Act*, 1867, Section 9, says "The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen". On the contrary, Sir John A. Macdonald, in the *Confederation Debates* in the Parliament of the Province of Canada, took pains to emphasize that the Quebec Resolutions on the subject (on which Section 9 of the Act is based) had "met with the unanimous assent of the Conference";¹ and it is noteworthy that not one of the opponents of Confederation, in any province, advocated republicanism.

The London Resolutions on the monarchy reiterated those of Quebec.² The third and fourth drafts of the British North America Bill proposed that the new nation should be called the "Kingdom of Canada",³ and this was dropped only in deference to the real or supposed sensibilities of the Americans.⁴ Sir Leonard Tilley then suggested, as a synonym, the old

French word "Dominion",⁵ which had disappeared from that language but had been preserved in English: and Lord Carnarvon, the Colonial Secretary, writing to the Queen, at the request of the Fathers of Confederation, told her: "The North American delegates are anxious that the United Provinces should be designated as the '*Dominion* of Canada' (his italics). It is a new title; but intended on their part as a tribute to the Monarchical principle which they earnestly desire to uphold."⁶ It might be added that one of the most vociferous supporters of that principle was Sir Georges Etienne Cartier.²

It would, indeed, have been very surprising if any British North American of consequence had advocated republicanism in the 1860's. Not one square inch of any of the colonies or provinces had ever been under a republican form of government. In fact, New Brunswick and Canada West (now Ontario) had been founded by people who fled (or were driven) from the Thirteen Colonies precisely because they refused to live under such a government; and the motto of the province of Ontario to this day commemorates both the monarchism of its founders and their resolve to maintain it: "Ut inceptit, sic permanet, fidelis": "As she began, so she remains, faithful". Even the republican rebel Mackenzie, after a sojourn in the United States, begged to be allowed to come back and become a loyal subject of the Queen, declaring that if he had had any idea of what a republic was like, he would have been "the last man in America" to try to set one up in Canada;⁸ and the American Civil War took any remaining guilt off the republican gingerbread. The Confederation Debates are sprinkled thick with expressions of horror at American republicanism and "mob rule", and of pious gratitude that British North Americans had been spared such a fate.⁹

Why, then, do we now hear so much talk of republicanism, both in French and in English Canada?

First, because republics are once more the fashion, especially since the Second World War, and a lot of people want to be in the swim. All the countries behind the Iron Curtain are republics. Also India, Pakistan, Ghana, Nigeria, Kenya, Tanzania, Uganda, Zambia, Cyprus, South Africa, Ireland, Singapore, South Korea, South Vietnam, Algeria, Tunisia, Egypt, Syria, Lebanon, Israel, the two Congos, the Sudan, Mauretania, Mali, Senegal, Dahomey, Guinea, the Ivory Coast and Italy, have all, within the last few decades, joined the ranks which had already included the United States, France, and the whole of Latin America. (Incidentally, which of these not altogether similar polities would Canadian republicans take for a model?)

Second, some Canadians seem to have got it into their heads that people who live in a republic are somehow "freer" than those who live in a constitutional monarchy. It would be interesting to know precisely how and why. It is not obvious that South Africans (especially coloured South Africans), or Ghanaians, or Russians, or Chinese, or Hungarians, or Egyptians, for example, or even Americans, Frenchmen, Italians or Indians, have more freedom than we have.

The same comments apply to the notions that as a republic we should be more "independent", or should have more "dignity". How and why?

Then there is the contention that a republic would be more truly "Canadian". This also is not obvious. No part of this country has ever been a republic or part of a republic and to become one would be an abrupt break with our history. Our monarchy, our British monarchy, our Anglo-French monarchy, our historic monarchy, is part of the Canadian tradition. It is not something alien. It is bone of our bone and flesh of our flesh.

At this point, someone may say: "All very well if you are of British ancestry. British settlers brought the British monarchy with them in their baggage. But what about the French Canadians? What about the people of other origins who have come since: the Germans, the Scandinavians, the Ukrainians, the Hungarians, the Dutch, the Japanese and Chinese, and the rest? Surely the monarchy is no part of their Canada?"

Yes, it is. It is plain enough that British Canadians got their ideas of constitutional government from Britain. But where did the French Canadians get their ideas? From France? From Rome? From the United States? From Latin America? From the Laurentian Shield or the Aurora Borealis or the waters of the St. Lawrence or the Saguenay, or their own inner consciousness, or subconsciousness, or unconsciousness? No. Just as plainly, as definitely and as unmistakably as the British Canadians, they got their ideas of constitutional government from Britain; just as plainly, as definitely and as unmistakably they got their Civil Law from France.

As for the others, the Germans, the Scandinavians, the Chinese and Japanese and the rest: they came here, nearly all of them, of their own free will, knowing that they were coming to a country with a British constitutional monarchy, knowing that they would have to adapt themselves to this fact, just as, if they settled in Quebec, they would have to adapt themselves to a French Civil Law. They deliberately chose to become Canadians, deliberately chose to come to a country whose institutions had already been shaped by the two founding peoples who were here in 1867; deliberately chose to come to a country whose constitution was explicitly declared to be "similar in principle to that of the United Kingdom".¹⁰ That constitution they accepted as part of the Canada of which they chose to become citizens. That constitution they have lived under and worked under and prospered under.¹¹

In the working of that explicitly British, monarchical constitution, French Canadians and "other", non-British, non-French, Canadians have taken a distinguished part.

This is not to say that the constitution cannot be changed, that we are not free to become a republic if we want to. We were free to do so in 1867; we have been free to do so at any time since; we are free to do so now. But if we are to do it, let it be for good and sufficient reasons, not on the false ground that our existing monarchical constitution is "foreign" or "un-Canadian". Canada is not something rootless, floating in empty space; it is not simply a land mass. Canadians are "not simply so

many bipeds living within a given habitat which colours and determines all else in our lives. Man is a being who lives in time as well as in space; and the life of a people is rooted in time as well as envired by geography."¹² Our monarchy is part of our constitution; our constitution is part of our history, which has shaped our character as a people. To get rid of it is to change that character; and such a change is "not by any to be taken in hand unadvisedly, lightly or wantonly, but reverently, discreetly, advisedly, soberly", from deep conviction, grounded on rational examination of the facts.

There is no point in change for its own sake, or just for the sake of having the very latest thing in constitutions. (What matters in a constitution is not how new it is but how good it is, how well it works.) The bigger the change, the heavier the onus upon those who propose it to prove that it is necessary, or even useful. Changing Canada to a republic would be a very big change, the more so as there is an infinite variety of republics to choose from. The change would be fiercely resisted, at least in the Atlantic provinces, Ontario and British Columbia. A first-class row for sufficient reason is tolerable, may even be necessary; a first-class row without sufficient reason is criminal folly. What good would this particular first-class row do?

The republicans should be asked not only how their nostrum would make us freer or more independent, but also how it would give us better government, or more welfare.

Would a republic, in and of itself, give us a better distribution of legislative power between the Dominion and the provinces, stronger provinces, or a stronger Dominion, or a better balance of the two? Would it give us a better Executive (President or Cabinet), wiser, stronger, more responsive to public opinion? Would it rescue us from the tribulations, real or supposed, of minority government? Would it give us a better balance between Government and Parliament, or between either and the Civil Service? Would it give us better municipal government? Would it reduce the dangers of corruption? Would it make government cheaper?

Would a republic, in and of itself, give us more welfare, a higher standard of living? (Joining the American republic might; but that is a very different thing.)

These are the eminently practical questions the republicans must be made to answer, and answer in detail, with reasons. They have no right to ask us to buy a magic potion.

One alleged reason for changing to a republic is that it would help solve the problems arising out of French Canada's position in Confederation. If it were true, this would be a weighty reason indeed. But is it true? This is precisely the place where it is most necessary to ask how the magic potion would work, what specific ills it would assuage or cure.

Would a republic automatically mean more bilingualism in the national administration and public service, or in the provincial or municipal administrations and services, or in private business? Would it auto-

matically mean more bilingualism in the courts? Would it automatically mean more top jobs for French Canadians in public administration or private business? Would it automatically mean more French Canadians in the Cabinet, or more of them at the head of important departments? Would it automatically produce any change in the Senate or the Supreme Court of Canada? Would it automatically mean more French education for French-Canadian children outside Quebec? Would it automatically mean wider taxing powers, or more revenue, or wider legislative jurisdiction, or a "special status" for Quebec? Would it automatically add one copper to any French Canadian's pay, or shorten his working day by a fraction of a second? Would the country choose a French-Canadian President oftener than it chooses a French-Canadian Governor-General? Would a republic automatically smooth the path to an "Associate State of Quebec," or an independent Quebec?

An amiable, if rather fuzzy, desire to help the French Canadians is undoubtedly one source of the present talk of republicanism. There are at least two others: the carbon copy theory of Canada, and the rubber stamp theory of the Crown. Both are deep-rooted, but both are false.

The carbon copy theory of Canada assumes that this country really is, and certainly ought to be, a second United States. (Why on earth there should be a second, no one pauses to explain.) But, plainly, it is a poor copy. The Fathers of Confederation smudged it. It is high time we got busy with our erasers and cleaned it up.

There could not be a wilder misconception of the origin and nature of Canada. The Fathers of Confederation were not "a lot of mixed-up kids", who tried to copy the United States and failed. They tried to make a very different kind of country, and they succeeded.

The Americans deliberately broke with their past. We have repeatedly and deliberately refused to break with ours. The most important thing for us about the American Revolution is that we, both French Canadians and British Loyalists, refused to have anything to do with it, and indeed strenuously resisted American efforts to "liberate" us. The most important thing about the rebellions of 1837 is that they failed, and for the same reason: that most of the people, French Canadians and British Canadians alike, refused to have anything to do with them.

The Americans deliberately set out to make theirs a country of one language and one culture. We deliberately chose to preserve two languages and two cultures.

The Americans chose a decentralized federalism. We set out to create a highly centralized federalism. "They commenced at the wrong end", said Sir John A. Macdonald. "Here, we have adopted a different system."¹³

The Americans left most of their criminal law in the hands of the states. We entrusted the whole of our criminal law to the central Parliament.

The Americans made most of their judges elective, and left most of their courts to the states. We made all the judges of our superior, dis-

strict and county courts appointive, and placed the appointments in the hands of the central Government.

The Americans provided for no central control of the states, except what might be necessary to preserve a republican form of government. We placed at the head of every provincial Government an official appointed by the central Government, instructed by the central Government, and removable by the central Government; endowed him with the power to reserve assent to provincial bills and send them to the central Government for assent or veto; and, to make assurance triply sure, gave the central Government power to wipe any provincial Act off the statute book within one year.

The Americans in effect forbade denominational schools supported by public funds. We guaranteed their existence, and all provinces but one gave the central Government and Parliament special powers to enforce the guarantees.

The Americans wrote into their Constitution a very explicit and detailed Bill of Rights. We relied on the "well understood" unwritten "principles of the British Constitution".

The Americans provided for fixed election dates, for their President, Senators and Representatives. We provided only for a *maximum* duration of Parliament, with no "term" at all for the Government. (An American President who wins an election has to take a fresh oath of office; Franklin Roosevelt, who held office for a total of twelve consecutive years, was President four times. A Canadian Prime Minister who wins an election does not have to take a fresh oath of office; Sir Wilfrid Laurier, who held office for fifteen consecutive years, was Prime Minister only once.)

The American Congress and state legislatures are hedged around by constitutional prohibitions. They cannot, for example, confiscate property, or take one man's property and give it to another, or pass retroactive laws. Our Parliament, within the limits of subject and area laid down by the *British North America Act*, can do anything; for example, confiscate property, take one man's property and give it to another, or pass retroactive laws. So can our provincial legislatures, subject to the Dominion power of disallowance.

No wonder our constitution does not work like the American! No wonder the "carbon copy" looks smudged! But it does not follow that we should get to work with erasers. The French Canadians, for example, might not be altogether pleased by the erasure of section 133 of the *British North America Act*, guaranteeing a limited official bilingualism in Quebec and at the centre. The Roman Catholics might not be altogether pleased by the erasure of section 93 and the corresponding sections of the *Manitoba, Saskatchewan and Alberta Acts*. Very few of us would be pleased to see ten systems of criminal law instead of one, or to have most judges elected by popular vote.

A good many people, weary of a rapid succession of Dominion general elections (three in three years, five in eight years) may think they would

like the American system of fixed election dates. They might find the reality disillusioning. In the United States, no matter how unworkable a legislature may prove to be, it must go on till the preordained date; no matter what great new issues may arise, no matter how great the wave of hostile opinion, there is no means of hastening by so much as one hour a fresh consultation of the people. In Canada, a fresh dissolution of the legislature can break a deadlock, as in Quebec in 1936; here, parliamentary obstruction can force a parliamentary majority to go before the people on a great new issue where there is reason to believe public opinion is against that majority, as happened with Reciprocity in 1911. And it is noteworthy that the power to break a deadlock, or to bring the legislature into harmony with a changed public opinion, by dissolution of that legislature, is a power of the Crown.

That brings us to the other great current fallacy, the rubber stamp theory of the Crown. This can be very simply stated: the Crown, or its representative, must always follow the advice of the Cabinet in office at the moment, even if that Cabinet has just been resoundingly defeated in an election; or even if that Cabinet refuses to meet Parliament for more than the single sitting, once a year, that the law requires; or even if that Cabinet cannot muster a majority in Parliament and an alternative Cabinet which could do so is possible.

Parliamentary responsible government is a wonderfully sensitive, flexible and effective instrument, far more so than the American system. But also it can be a far more dangerous system than the American. In the American system, everybody is hedged around with legal prohibitions, which will be enforced by the Courts. In our system, that is not so. If a provincial legislature takes it into its head to prolong its own life by a year, two years, ten years, it can do so. No law prohibits. No Court can say no. If a Prime Minister tries to bludgeon Parliament or a legislature into submission by a series of elections, again no law prohibits, no Court can say so. As far as the law goes, he can dissolve a new Parliament or legislature even before it can meet. If he lets it meet, he can dissolve it any time he thinks it won't vote for him. And he can go on doing it as often as he likes. He can totally prevent Parliament or the legislature from transacting any business at all, or any business except what happens to suit him. He can call elections every few months, till the people, in desperation, either give him a majority or revolt. Not one shred of illegality, and all the quintessence of democracy: what can be more democratic than appeal to the people? But the result would be that governments would be irremovable except by their own consent, or by force of arms. Fantastic? Impossible? One Canadian Prime Minister, after being defeated at the polls, tried to fill up the Senate and the Bench. Another Prime Minister tried to dissolve Parliament before it could vote against him on a motion of censure. As recently as 1952, there were persistent rumours that a provincial government contemplated dissolving the newly elected legislature before it could meet.

What does stop this kind of thing happening in Canada? Generally,

the sense of decency and fair play and responsibility which we took over from Britain with parliamentary government itself. Generally, ministers remember that they are not the people's masters but the Queen's servants, answerable to the Queen's faithful Commons, bound to let Parliament meet, bound to let it vote, bound to abide by its verdict unless there are substantial reasons of public policy for appealing to the electorate. But if a Prime Minister tries to turn parliamentary responsible government into unparliamentary irresponsible government, then only the Crown can stop him; only the Crown can keep Government responsible to Parliament and Parliament to the people; only the Crown can prevent Parliament from degenerating into a rubber stamp for the Prime Minister, elections into mere plebiscites—plebiscites whose verdict the Prime Minister accepts only if it suits him—only the Crown can prevent the Prime Minister, prime servant, from degenerating into a prime despot, the whole process into an elaborate farce, swindling the public at the public expense, with the public helpless to protect itself.

The Crown is the embodiment of the interests of the whole people, the indispensable centre of the whole parliamentary democratic order, the guardian of the Constitution, ultimately the sole protection of the people if M.P.s or M.L.A.s or ministers forget their duty and try to become masters, not servants. The Crown's reserve power to refuse the advice of ministers when that advice imperils the Constitution still remains, as Lord Attlee reminded us in 1952 and 1959; and if parliamentary government is to survive, it must remain. Parliament is the very Ark of the Covenant of the Canadian tradition. But a system in which Parliament exists, debates, votes, only at the pleasure of a jack-in-office, is a snare and a delusion. In Pym's words, "Parliaments without parliamentary liberty are but a fair and plausible way into bondage. Freedom of debate being once foreclosed, the essence of the liberty of Parliament is withal dissolved."

Responsible government means not only responsibility to Parliament, or to the electorate, but also responsibility for the interests of the nation as a whole. It has been maintained, by a distinguished Canadian professor, that a Prime Minister's supreme duty is to keep his party united and in office. That was not the doctrine which led Peel to carry the repeal of the Corn Laws, at the price of destroying his party. It was not the doctrine which led Wellington to support him. The true doctrine is that "The Queen's Government must be carried on", that "there are times", as Meighen said, "when no Prime Minister can be true to his trust to the nation he has sworn to serve, save at the temporary sacrifice of the party he is appointed to lead." That is something Prime Ministers are a good deal more likely to remember if they think of themselves first and foremost as the Queen's servants, not just party leaders with "an ambition to be re-elected".

The Crown stands also for something else which is essential in the Canadian tradition: for a Canadianism which, while utterly loyal to

Canada, looks beyond Canada. It reminds us that *nationalism* is not enough. Another distinguished Canadian professor, some dozen years ago, extolled the "pure" Canadian, "who knows only Canada", "for whom the Old World has virtually ceased to exist". It apparently did not occur to him to ask what use this monstrosity would be in NATO or the U.N.; if he had had any conception of loyalty to a Queen of a world-wide Commonwealth, such pernicious nonsense would never even have entered his head.

The Crown is in truth "the imperial fountain of our freedom". If we abolished it, and substituted a national President and ten little presidents for the provinces, then of two things one: either we should have to change our whole system of government and replace it by an American or Gaullist or Soviet or other totally alien system; or we should have to give the presidents substantially the same powers as the Queen, the Governor-General and the Lieutenant-Governors now have. If we go for Gaullism, or plump for "popular democracy", or even the American congressional variety, we shall be entering on an enterprise which will be a violent break with our whole history, our whole constitution, all our political ideas, habits and practices; an exercise in political and constitutional bedlam, the issue of which no man can even dimly foresee. If we embark on the more modest attempt simply to replace the Crown by presidents, in the innocent hope that we can leave the structure of parliamentary responsible government otherwise intact, we shall still face formidable problems. Unless we give the presidents the reserve powers, we shall run the risk of Prime Ministerial dictatorship. But the reserve powers are not easy to define in precise terms, and the constitutional draftsman might end up by giving the head of state, and his provincial counterparts, either too much power or too little.¹⁴ Even if he were successful, his troubles (and ours) would not be over; for he would have to devise a method of election which would provide some hope that the presidents would be reasonably impartial politically; no small task.

And all this effort, all this ingenuity, all this tearing up of our roots, all the time, all the strife the process would involve: for what? What would it all accomplish? What good would it do? Who would be the better for it? Heaven knows, we have problems enough, constitutional and otherwise, to occupy us, problems national and international, constitutional, political, social, economic; urgent, practical problems to which we must find some tolerable solutions if Canada is to preserve any life at all, let alone a good life. Surely they are enough to tax all the intellectual, spiritual, moral resources we have, without gratuitously adding anything extra that can be avoided?

Unless the proponents of a Canadian republic can produce massive evidence that the change is a matter of urgent public importance, the whole notion must be summed up in the verdict of Sir Robert Borden on a very different subject: "One of the most absurd suggestions ever to come to my attention".

Footnotes

¹*Parliamentary Debates on the Subject of the Confederation of the British North American Provinces* (Quebec, 1865), pp. 33-4. (Hereinafter cited as *Confederation Debates*.)

²*Confederation Documents*, edited by Sir Joseph Pope (Toronto, 1895), pp. 39 and 94.

³*Ibid.*, pp. 159, 160, 162, 163, 164, 177, 178, 181, 182 and 190.

⁴D. G. Creighton, *John A. Macdonald: The Young Politician* (Toronto, 1952), p. 458.

⁵The *Oxford English Dictionary* calls it "obsolete French".

⁶*Letters of Queen Victoria, Second Series* (London, 1926), vol. I, p. 394.

⁷*Confederation Debates*, p. 59.

⁸W. M. Kilbourn, *The Firebrand: William Lyon Mackenzie and the Rebellion in Upper Canada* (Toronto, 1956), p. 241. Note also the quotations from his petition to the Governor-General, p. 242.

⁹Notably Cartier, *loc. cit.*

¹⁰*British North America Act, 1867*, preamble.

¹¹This is important in relation to complaints that the phrase "the two founding peoples" relegates the "others" to second-class citizenship.

¹²John Farthing, *Freedom Wears a Crown* (Toronto, 1957), p. 14. The whole book is an admirable philosophical discussion of the basis and meaning of our monarchy.

¹³*Confederation Debates*, p. 33.

¹⁴See, for example, the attempt in Marcel Faribault and Robert M. Fowler, *Ten to One: The Confederation Wager* (Toronto and Montreal, 1965), in Articles 32 and 33 of their proposed new constitution, at pp. 128-9.

Memorandum
On The Associate States

Dr. Eugene Forsey

November, 1966

Various proposals have been suggested to cure Canada's constitutional ills. One of these is the "associate state" concept put forth by the Saint Jean-Baptiste Society of Montreal to the Quebec Legislature's Committee on the Constitution, May 15, 1964. Although the idea of the associate state had been discussed before this date, the Society's presentation was one of the first popular expressions of support for it. Dr. Forsey's memorandum is mainly concerned with an analysis of this report.

Memorandum On The Associate States

The nearest thing to a specific proposal for a solution to our constitutional problems is the memorandum of the Saint Jean-Baptiste Society of Montreal to the Quebec Legislature's Committee on the Constitution, May 15, 1964.

The present Canada would disappear. It would give place to two nations, "English Canada" and "Quebec", each embodied in a sovereign "National State"; and the two would "associate themselves" to form "the Canadian Confederation".

"English Canada" would be composed of "the English-Canadian provinces". The repetition of the word "English" throughout the document, and the total ignoring of the French-speaking minorities in the "English" provinces, are noteworthy. There is not one syllable about any provision for their rights. On the contrary, there is the explicit statement that "the Associated State of Quebec and the Associated State of English Canada, including its several provinces", would each "decide on its official language or languages". Moreover, while there is provision for a Bill of Rights in Quebec, there is nothing about a Bill of Rights either in "English Canada" or in the "Confederation" as a whole. And, as if to drive the point home, "English Canada's" opposite number would be not "French Canada" but "Quebec".

Having made it plain that the "National State" of the nine provinces would be thoroughly, totally, "English", the Society might have been expected to leave that National State's Constitution to be determined by the people concerned. But it does not. Instead, it lays down firmly that "the English-Canadian provinces will continue to form a federation", and that this federation's Constitution "will recognize the delegation of powers between Ottawa and the provincial governments". It graciously concedes that "the number of provinces" of the English-Canadian "federation" could be "reduced". It says the "English-Canadian nation" would have "freedom to give its national government all the powers necessary to discharge the responsibilities" which that nation "thinks fit to confer on it". But apparently the "English-Canadian nation" would not be allowed to set up a unitary state.

The other "sovereign state" would be "Quebec", which, if its electors, by referendum, so decided, would be a republic. The President would be elected by "all the members of the Quebec Parliament" plus an equal number of "grand presidential electors chosen by the municipal councils". The President would "sign all the laws adopted by the Quebec

Parliament", which would be made up of a "Chamber of Deputies and a Chamber of Councillors," both "elected by the people".

Each "National State" would, "in principle", have "all the powers of a sovereign state". In practice, their sovereignty would be "limited" in two ways.

First "certain powers" (not specified) would be "exercised jointly by the governments of the Associated States in virtue . . . of a treaty concluded between the two States", which would be "revised every five years". What this means, there is not one word to explain.

Second, certain other powers would be given by the two States to the "Confederation", under the "Confederal" Constitution.

The Confederation would have a unicameral Legislature to be known as the "Confederal Chamber". The National Government of each State would "itself determine the method of election and the term of office" of its representatives in the Confederal Chamber, and "their electoral districts". This last seems to imply that the members of the Chamber would have to be directly elected, and could not be chosen either by the National Parliament of either State or, in the case of "English Canada", by the provincial legislatures.

No law could be passed by the Confederal Chamber unless it obtained a majority vote from the representatives of each Associated State.

And on what matters could the Chamber legislate? Total silence. The explanation seems to be that the real power in the Confederation would reside not in its Legislature but in its Executive, the "Supreme Council of the Confederation".

This "Supreme Council" would be made up of "the Governments of each Associated State". Each Government could "delegate an equal number of Ministers to this Council", which would be chaired, turn and turn about, "by the Prime Minister of each Associated State".

The Supreme Council would "direct the foreign policy of the Confederation." Nothing is said about what "foreign policy" would in fact include: an astonishing omission, in view of the very sweeping claims advanced for Quebec in this field under the present Constitution (notably by M. Gérin-Lajoie in his celebrated speech to the Montreal Consular Corps in April, 1965).

The Supreme Council would also "have the responsibility of supervising the execution of laws passed by the Confederal Chamber" (on the totally unspecified subjects on which it would be empowered to legislate); of appointing the Confederal civil servants; and of "establishing a close co-operation between the two Associated States in the fields where they have common interests: economic planning, monetary policy, customs, financing of the Confederal administration, continental transport, etc."

Apparently, economic planning, monetary policy, customs tariffs, financing of the Confederal administration, continental transport and whatever may be covered by the majestic sweep of that "etc.," would not

be dealt with by the Confederal Chamber but by arrangements arrived at between the two sets of ministers.

The Supreme Council would also "create the Confederal Court to hear all cases to which the two Associated States were directly or indirectly parties." This High Court would have two annual sessions: one in the capital of the "English-Canadian Federal State" (note, once more, "English-Canadian" and "federal"), "the other in the capital of the State of Quebec."

In view of the numerous demands from Quebec that the Supreme Court of Canada ought to be provided for in the Constitution itself, not by a mere Act of the central Parliament, it is surprising that the Saint Jean-Baptiste Society is prepared to leave the constitution of the Confederal Court to a mere decision of the Confederal Executive. One would have thought that if the matter was not to be dealt with in the Confederal Constitution itself, at least it would be entrusted to the Confederal Chamber.

It is difficult to resist the conclusion that the Chamber's functions can be summed up in Flecker's lines:

Give all thy days to dreaming,
And all thy nights to sleep.
Let not ambition's tiger
Devour contentment's sheep.

This is perhaps just as well, since it is equally difficult to resist the conclusion that the number of laws which would get the required double majority would approach zero.

How would the Supreme Council itself arrive at its decisions? Silence again; but one can scarcely doubt that, as in the Confederal Chamber (if it ever had a chance to pronounce on anything), any decision would require a double majority. Given the principle of collective responsibility of each of the two Cabinets, this would in fact mean that nothing could be done except by unanimous vote.

"French and English" would be "the two official and obligatory languages of the Confederal State in all its organisms and in the exercise of all its legislative, executive and judicial powers." One would be grateful for some precision here, but none is forthcoming.

"The assets and liabilities of the Canadian State", says the Society, would be "divided between the State of Quebec and the National State of English Canada in proportion to their respective populations, allowing for the federal property actually situated on Quebec territory which would of course fall to the State of Quebec. This latter would thereafter transfer to the Confederal administration the properties deemed necessary for its proper functioning".

There are two ambiguities here.

First, who would do the "deeming"? The State of Quebec or the Confederation?

Second, what is meant by "allowing for the federal property situated on Quebec territory"? Does this mean that Quebec would get all such

property, and that the *remaining* assets of the Dominion of Canada would be divided between the two Associated States in proportion to population? Or does it mean that *all* the assets would be divided in proportion to population, Quebec's share to include all those actually situated on Quebec soil? It sounds remarkably like the former.

Finally, there would be a procedure for amendment, "protecting the freedom of each Associated State". What this means is anybody's guess.

"This," said Hurrell Froude at the end of his biography of St. Neot, "is all that is known to men of the life of the Blessed St. Neot, but not more than is known to the angels in Heaven." What has just been outlined is all that is known to men of the Saint Jean-Baptiste Society's proposal for a Canadian Confederation of two Associated States; and the angels in Heaven are not available for our further enlightenment. The Society itself seems to have suspected that some people might want something rather more precise; but all it offers for their satisfaction is a couple of final paragraphs which dispose of all the real problems by an airy: "We leave to the experts in constitutional law, economics and political science the task of drafting the Constitution of the Associated State of Quebec and of the Canadian Confederation. We have simply set forth the principles which should guide the authors of this Constitution, and described rapidly the principal institutions to which they will give birth."

It is difficult to believe that the other nine provinces will ever agree to buy such a very large pig in such a very thick black poke. If they did, they would almost certainly find, when they opened the poke, that the pig was paralyzed. If any such proposals are brought forward, either in a Dominion-provincial conference or anywhere else, the representatives of the other nine provinces should insist on very precise explanations on every one of the "principles" they are asked to subscribe to, and on the functioning of every one of the "principal institutions to which they would give birth". The "experts in constitutional law, economics and political science" should be called upon to stand and deliver. Only when they have done so will the governments of the nine provinces, and their people, not to mention the people of Quebec, be in any position to say whether they will accept such a scheme. The prospects of the nine provinces accepting this scheme are, in my judgment, nil; so are the prospects that, if they did by any chance go into the thing, they would stay in it for any period much longer than half an hour. But whatever happens, their governments, and the government and people of Canada, must know exactly what it is they are being asked to accept. The great danger is that in a mood of saccharine amiability, the governments will shut their eyes, open their mouths, and swallow, and Canada will die.

The Making
of Federal Constitutions:
A Study of
Constitution-Making Processes
in the United States, Australia,
India, Pakistan, Malaysia,
and the West Indies

Alex Mesbur

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August, 1965

Mr. Alex Mesbur, a graduate of the University of Saskatchewan in Honours Politics and History, wrote this paper while a law student at Queen's University under the direction of Dean W. R. Lederman.

The paper deals with constitution-making in federal states. Any attempt to draft a new constitution or to make serious amendments could involve an important shift in our approach to federalism. How are federal constitutions created? What has been the experience of other federal states? Mr. Mesbur's paper is a study of six aspects of the constitution-making processes in the United States, Australia, India, Pakistan, Malaysia, and the West Indies:

The political and constitutional background to federal constitution-making;

Constitution-making as an amendment process;

The use of committees of inquiry and commissions and conferences in the period before final constitution-making;

Creation of constitutions by legislation and order-in-council;

The constituent assembly as a constitution-making device;

The use of referenda and the ratification of constitutions.

The Making of Federal Constitutions: A Study of Constitution-Making Processes in the United States, Australia, India, Pakistan, Malaysia and the West Indies*

The making of a modern constitution is a complex procedure, involving close consideration of legal, political, social and economic questions. It is a process tempered by the hopes and aspirations of the people for whom the constitution shall be a supreme law, and in the case of former colonial areas, by the wishes of the colonial master. This paper is a brief summary of longer papers done on each of the states involved, and will attempt to outline the processes of constitution-making in the United States, India, Pakistan, Australia, Malaysia and the West Indies. All the states involved are—or were, as in the case of the West Indies—federations, and all were faced with problems of regionalism, and cultural, religious or language differences, facts which make them particularly interesting from the standpoint of Canadian experience.

The Political and Constitutional Background to Federal Constitution-Making

The states under discussion here all were at unique stages of constitutional development when they formed federal constitutions. The United States was alone in the group in that it was wholly independent, following the American Revolution, and full sovereignty rested solely in the hands of the American colonists. Federalism was not a new idea in American political thought, some schemes dating back to the 1750's. The Revolution naturally was a spur to constitutional growth, and in the late 1770's

*I wish to acknowledge in particular the assistance given me during the course of my research by Professor R. L. Watts of Queen's University, and Dean W. R. Lederman of the Faculty of Law at Queen's. Professor Watts was kind enough to allow me the use of his highly informative doctoral thesis, and made the problem of compiling a bibliography for the Asian states and the West Indies a much more pleasant task than it would ordinarily have been. Dean Lederman has read the bulk of my work and, in spite of a busy schedule, has made invaluable criticism, and as well, has offered much encouragement.

Naturally, neither of these gentlemen bears any responsibility for the flaws or errors in my work, for which I alone am responsible.

and early 1780's each of the "thirteen colonies" developed state constitutions. Interestingly, these were generally created by legislative bodies empowered by constituents to so act, and then were submitted to voters for their approval. There was thus a real bias towards a compact theory of government and popular participation in constitution-making. On the national scale, the Revolution transformed the continental congresses of 1774 and 1775 into a national government, which, in 1781, was regulated by the Articles of Confederation adopted in that year. The Articles created a confederation called the United States of America, with a congress, but no true executive. The central powers were limited to a severe degree—no doubt in reaction to the states' fear of central domination—and though the Articles stated that "Every state shall abide by the determinations of the united states in congress assembled . . ."¹, there was no sanction or any other force which could make this clause function, and thus the determinations of the central body were little more than recommendations. Defects were immediately seen, but attempts at amendment were side-tracked repeatedly. Movements to call a full-scale constitutional convention thus began to appear more frequently. In 1786, Virginia and Maryland invited several others to Annapolis to discuss commercial questions, but the convention emerged with a recommendation for a full constitutional convention at Philadelphia, ". . . to render the Constitution of the Federal government adequate to the exigencies of the Union; and to report such an Act for that purpose to the United States in Congress Assembled, as when agreed to by them and afterwards confirmed by the legislatures of every State will effectually provide for the same".² This recommendation was sent to the Congress which, after some procrastination, did issue a call for a conference to be held in 1787. Thus in the brief period between the Revolution and 1786, America was prepared to move from colonial status to limited co-operation and, finally, to contemplate a more secure and adequate union. Much of this desire for unity came from problems of defence against foreign hostility, and hopes for better organization of the economic life of the country, particularly foreign trade and currency. These motives, compounded by what, even at this early date, could be called the American sense of destiny, led to the insistent but thoughtful emergence of men anxious to build a strong and united America. A spirit of change was in the air in the new nation; unfettered by any legal or constitutional precedents it was found to follow, it could—and did—move to create a constitution unique in history.

Thoughtful men also saw federation as a solution to the division of the Australian states, and attempts for it occurred as early as 1842. Australia was in a far different position from the United States. Britain was still the Mother Country and any constitutional changes were subject to British approval. Political maturity was at a high level in Australia, however, so it can be safely said that the British aspect of the later constitution was more a formal legal requirement than true British participation in constitution-making. Not till the 1880's did economic or defence pres-

tures become great enough to encourage positive steps at union. In 1883 there was created by British legislation a Federal Council of Australasia, "... to be a legislature merely, with no executive powers and no control over revenue or expenditures. And even its legislative powers were very scanty."³ This was much like America under the Articles. By 1890, pressure for closer union grew in Australia, and led to conferences, with delegates appointed by state legislatures, in 1890 and 1891. The latter conference became the basis of later constitutional discussions, and drew a bill followed closely in framing the 1901 constitution. By 1897, a full-scale constitutional conference was created, which produced the final constitution. As in America, then, though federation was an idea of long standing, the real movement leading to it took place in about a ten-year period. It is clear that as problems of defence and more complex internal and international economic relations grew, the idea of federation grew apace. Australia had a very large degree of self-government by this time, and the political traditions of Britain were of second nature to the country. The American model—and its success—were a real spur as well, so once federation became a politically advantageous solution, Australian leaders were prepared to move on their own to achieve full self-government.

A far different story from this leisurely development marks the history of India and Pakistan. The degree of self-government was less, and hostility to Great Britain was high, particularly by the two major political parties, the Congress Party (Hindu) and the Muslim League. Britain, by the end of World War II, was firmly committed to Indian independence, but most solutions she prepared were rejected out of hand by the Indian leaders. Not until 1946, when a British Cabinet Mission gave detailed proposals for Indians making their own constitutions was a solution in sight. In spite of attempts at compromise for Hindus and Muslims, these two elements of the Indian population could not be reconciled. The result, in 1947, was to give independence to two separate states, India and Pakistan, and the Constituent Assembly set up under the 1946 plan was split to become two constituent bodies, each to make a constitution for a wholly independent state. Because Britain granted independence before any constitution was made, she had no role to play in constitution-making, except in being the ultimate legal source under which the Assemblies were set up initially. Both new nations had been ruled by Britain for many years and a strong British tradition was imbued in their political life. Partition of course created new problems, and Pakistan, in particular, being a state created where none existed before, was left in a state of turmoil, without a well-established administration. Political awareness at the popular level was low and illiteracy prevented general participation in constitutional development. In Pakistan this led to the failure of the democratic system, while India, perhaps better prepared for independence, managed to carry through quickly to a final constitutional solution.

Unlike the previously mentioned states, both Malaysia and the West

Indies were not independent states to any large degree when they were federated. They were really Crown Colonies or protectorates, and thus Britain was not only a legal source of their constitutions, but also played a major role in their formation. British Acts and Orders-in-Council created the states and brought their constitutions into effect, and greater degrees of independence followed federation. Thus Malaysia was federated in 1948, but got full independence only in 1957; and the West Indies, federated in 1958, got full internal self-government in 1960 and was dissolved in 1961 before full independence was achieved. In these states, federation was seen, especially by Britain, as a solution for economic and administrative backwardness, though the Mother Country was not ready, at federation, to grant full independence. There was a relative political immaturity in both colonies, and a clear lack of capable local leaders. So the plan was to federate, and, in that framework, gradually to grant more and more independence.

Constitution-Making as an Amendment Process

In Malaya and the West Indies, constitutions were granted to federations which were not independent. Thus, on the road to independence, various amendments were made to the constitutions, usually by Order-in-Council in Britain, based on the requests of either the legislatures in the federations, or local constitutional conferences. These amendments usually were but steps towards more complete self-government, adding to the electorate or giving a larger measure of cabinet government; and were clearly contemplated when the constitutions were promulgated.

In the United States, however, amendment played a large role in the creation of an entirely new constitution. When the Annapolis Convention of 1786 recommended a full constitutional convention, the recommendation was sent to the Congress to be implemented. When Congress, reacting to the temper of the times, issued a call for such a convention, it did so, however, "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal Constitution adequate to the exigencies of government and the preservation of the Union".⁴ Clearly, then, the convention was to be a body advisory to Congress, and any changes it proposed were to be made in the framework of the amending procedure of the Articles. This procedure required that any alterations be agreed to by Congress and by all the state legislatures; that is, unanimous consent by all states was necessary.

But the result of the convention was not merely a series of amendments to the old Articles, but an entirely new constitution, which would come into effect on being ratified by conventions in merely nine of the states, and would create a union of these nine who unanimously consented. Thus it is clear that the terms of reference of the convention were totally ignored by the constitution-makers. As R. L. Schuyler points

out, "The convention not only drafted a wholly new plan of government, but . . . it inserted in the constitution the provision that it should go into effect when ratified by nine states. Professor I. W. Burgess . . . has forcefully pointed out that what the convention 'actually did, stripped of all fiction and verbiage, was to assume constituent powers, ordain a new constitution of government and liberty and demand a plebiscite thereon over the heads of all existing legally organized powers.'"⁵ The entire constitution, then, meant as an amendment to the Articles, emerged as a wholly new instrument of government. This in itself sets apart the American experience from all others and marks a revolutionary type of step in constitution-making. The key point of course is that the amendment procedure required acceptance by all the states, while the new formula needed only nine of the thirteen states to ratify to make the constitution operative for those so ratifying. It is clear, then, that far from following its terms of reference, the American constitution-making body went far beyond these bounds and gave to the nation a new constitution to be based on a new legal source.

The Use of Committees of Inquiry, Commissions and Conferences in the Period Before Final Constitution-Making

A favourite device, used particularly by Britain in granting constitutions, has been the employment of investigating commissions or conferences, which run the range from analyzing particular thorny problems in a constitution to proposing entire schemes of economic, social and constitutional development. The United States used such conferences least of all in the time preceding its constituent assembly, but even there the Annapolis Convention of 1786 was a conference—ostensibly for trade negotiations—which led to the calling of a full-scale conference. But the device is primarily a pre-constitution method by which a colonial master can examine the desires of the colony and in that way reach conclusions upon which to build a constitution. As a rule, the more independent the state to receive the constitution, the less the Mother Country tends to participate in such investigatory proceedings. In Australia, for example, the Australasian convention of 1883 was primarily a local movement, and led to British legislation creating the Federal Council of 1885. So too were the Conventions of 1890 and 1891 locally inspired, and the latter attempted to assume the role of an Australian constitutional conference. Delegates were appointed by the local legislatures, and the entire 1891 meeting was the basis of the constituent assembly of 1897.

Investigatory conventions were much more important in India and Pakistan than in more highly developed Australia. When it became clear to Britain that the limited government of the 1935 constitution was unsatisfactory to Indians, and that the Indians demanded full, not merely primary, responsibility for their new constitution, a mission (the Cripps Mission) was sent out in 1942. It emerged with a new draft plan for India, after much discussion, whose chief recommendation was that after

the war, an elected constitution-making body would be created for India. As the plan was not generally accepted, in 1946 there was a British Cabinet Mission which created a highly detailed constitutional framework. It had intended to make its recommendations primarily on whatever compromises could be reached between Hindus and Muslims, but as this agreement was not forthcoming, the Mission made its own suggestions. This was a deviation from the usual procedure for commissions, which usually were scrupulously careful to base their reports on local wishes. In India, a conflict of the major groups made a consensus almost impossible to achieve, so the Mission attempted to make its own compromise as to the constitutional machinery to be set up. Indeed, the Mission's success is shown by the fact that the Constituent Assembly finally set up was along the plan created by the Mission.

The usual pattern for pre-constitution conferences or commissions was somewhat different from these Indian examples. Whether held locally or in London, the British Government generally attempted to include at these conferences the leaders of the major nationalist political parties in the territories involved, even when they were unrepresented in the local colonial government, because until they were present to work out compromises amongst themselves, the solutions of the conferences were of little efficacy. Secondly, the British Government has usually tried to create a situation where those included felt that they were really bargaining, working out a 'social contract' and not merely participating in a talking shop.⁶ For this reason, the debates are usually private, and the conflicts thus have a much better chance of being resolved. The public eye—particularly if delegates are also politicians—would have a definitely dampening effect on honest discussion of all the issues. Britain, of course, as the legal sovereign and dominant member, has had to tread the narrow line between mere participation and domination, and even if she has restrained her influence it can be seen in the institutions adapted in new federal constitutions.

In Malaya, when local protest against the 1946 constitution imposed by Britain grew, the Colonial Office invited the Malay rulers and major Malay political leaders to join in working out a more acceptable constitution, the British stipulating, however, that whatever new constitution was prepared would have to provide for a strong central government. The working committee set up at this time submitted its proposals to Chinese and other non-Malay groups for amendment, and finally a scheme emerged which, approved by Britain, led to the legislation and agreements creating the federation of 1948. This was not full self-government, so the next steps also were by conferences and commissions. In 1956, a constitutional revision conference was called in London at which British representatives met with the political leaders of Malaya and the representatives of the Sultans. The conference appointed a Commission (Reid Commission) to "make recommendations for a federal form of constitution for the whole country as a single, independent, self-governing unit within the Commonwealth based on parliamentary democracy with

a bicameral legislature . . .".⁷ The Commission was composed of two Englishmen, and one man each from India, Australia and Pakistan. It received memoranda from interested groups, and its report and draft constitutions, after revision by a Working Committee representing Britain, the Sultans and the federation government, led to the creation of an independent Malaya in 1957. As Singapore and the Borneo territories came closer to merger with the federation, similar steps were taken. A Malaysia Solidarity Committee was established representing all the territories, and the Cobbold Commission set up to examine Borneo's accession. (Singapore agreed to join by intergovernmental consultation, and no general conference was called). The Cobbold report set up a detailed scheme for the addition of the Borneo group—after examination by an intergovernmental committee composed of British, Malayan and Bornean representatives—and it was the basis for the creation of Malaysia for the Borneo territories, excluding Brunei, which did not wish to join immediately.

In the West Indies, commissions were even more prominent than elsewhere, and most were created by British pressure, for in this area Britain wished for federation perhaps even more than the local populace desired it. In 1938, the Moyne Commission, sent to investigate West Indian social and economic conditions, recommended more West Indian involvement in government. Conferences also led to the eventual gaining of self-government by Jamaica and Trinidad. As far as the federation is concerned, the entire history of its creation is a series of conferences. At Montego Bay in 1947, all the colonies were represented by delegates chosen by their respective legislatures. The conference created the Standing Closer Association Committee (SCAC), composed of West Indians chosen by the local legislatures, and a chairman and secretary appointed by the British Colonial Secretary, which was to examine tariff and fiscal problems, as well as the details of a federal constitution. The SCAC report (known as the Rance Report), which recommended a sort of advanced Crown Colony federation, was accepted by all the island Caribbean legislatures and was the basis for later development. The next step, also at the initiation of Britain, was a conference in 1953, which expanded the Rance Report. This conference was followed in London by another conference, in 1956, which hammered out final solutions as far as possible. This conference appointed a Standing Federation Committee, which, as a "prefederal executive", did detailed organization preparatory to federation. Once this was done, federation became a matter of appropriate legislation. Once the federation was formed, and as a requirement of the constitution, further conferences were held on the road to full independence, an event which dissolution of the federation prevented.

In general, then, the pattern in colonial nations has been for the Secretary of State for the colonies to send out a commission or committee to inquire and to prepare a report, as was done by the Reid and Cobbold Commissions in Malaya, and the Cabinet Mission in India. If the changes proposed are basic, they have been settled in conferences in London, the

results being discussed by local committees and legislatures before a finished set of constitutional proposals becomes the basis for legislation. The commission method can of course be used internally by a federal state, with each local unit appointing members to a general conference which can reach broad agreement and then have the details completed by committees, all subject to the final approval of the unit governments. Especially if the conferences are private can the method be seen as suitable, and if joined with independent investigatory commissions can provide a wide survey of feelings for adapting or changing a federal scheme. An example of this somewhat different type of commission is that used by Pakistan after the failure of its Constituent Assembly and the establishment of martial law in that nation in 1958. Under the President, there was neither an elected legislature nor a constituent assembly, so under a mandate given him, by a presidential referendum in 1960, authorizing the preparation of a new constitution, Ayub Khan appointed the Constitution Commission of Pakistan, which was to examine the previous failures in government and to recommend a new constitution. It operated much as a royal commission, sending out highly detailed questionnaires and interviewing prominent authorities. Its investigation probed all areas from the type of government (federal or unitary) preferred, to the question of the role of Islam in the state. It was not bound by the popular recommendations made to it, in proposing final solutions, nor was the President bound by the findings of the Commission. Unlike other states mentioned here, there was no democratic sanction behind the recommendations, but the Commission operated by relatively the same procedures as did the British (Colonial conferences or committees, that is) as a fact-finding body empowered to propose solutions. The constitution which emerged, after study by another commission and approval by the President, thus also can be said to follow the general pattern of all conferences or commission-created constitutions.

Creation of Constitutions by Legislation and Order-In-Council

In Australia, Malaya and the West Indies, British legislation was necessary before the constitutions decided on at conferences could be implemented. It is an elemental fact that this had to occur, because sovereignty rested not in local hands, but with the British Parliament. In Australia, once the constituent assembly (to be discussed later) had decided on the constitution, there was to be an address to the Crown to enact it. Australian delegates presented it in London, and after some discussion a Bill was passed creating the Commonwealth of Australia under the new constitution. This fact makes the Australian document unique, for though it was created by the people through a local assembly, the nation it governs is a creation of law from outside. Moore points out that "the establishment of the Commonwealth is no 'act

of state', transcending the limits of legal inquiry; it is an act of law performed under the authority of the acknowledged political superior. The constitution is first and foremost a law declared by the Imperial Parliament to be 'binding on the Courts, Judges and people of every State and of every part of the Commonwealth'".⁸ Unlike the United States, then, Australia is not completely a creation of the Australian people.

Malaya, though it too had to look to Britain for legal sanction of its new federal status, was in a slightly different position from Australia. The local Malay Sultans were still possessed of sovereignty to some extent, a fact reflected in the 1948 Federation of Malaya Agreement. This agreement between the Sultans and British Crown brought the Constitution into effect, and as Mills says, "it emphasized that the Sultans were the legal source of authority and that the new constitution was not imposed on them, but was drawn up with their consent."⁹ In so far as Penang and Malacca, two wholly British-controlled areas, were concerned, no agreement was necessary, and a British order-in-council, the Federation of Malaya Order-in-Council, 1948, made them members of the federation. After the Reid Commission Report of 1957 and the creation of a new draft constitution, three legal steps were necessary to give independence. In Britain, there was the *Federation of Malaya Independence Act*, 1957 (and orders-in-council under it) which was conditional on approval of the new constitution in Malaya, and which approved the conclusion of an agreement between all the Rulers for independence. If such an agreement was reached, and approval given, Britain would by order-in-council make the new federal and state constitutions operative for those settlements still under the protection of the Queen. (The Federation of Malaya, Independence Order-in-Council, 1957, did this.) The British Act was purely national; the Federation of Malaya Agreement, 1957, was an international legal document. As the Queen still had sovereignty, this agreement was needed to replace those of 1948. It had not only to declare the new federation, but also to record that British sovereignty and authority in the entire federation had ended. The agreement was made between the British Crown, the new constitutional Monarch of Malaya, and the Rulers of the Malay States. In schedules to the agreement were all the new state and federal constitutions, and it too was conditional on approval by enactments at both the federal and state levels in Malaya. This third step was taken by the federation itself, in the *Federal Constitution Ordinance*, 1957, and by state enactments in the Malay States. By then the new federation was established. When Malaya finally became Malaysia, it was by another agreement—the *Malaysia Act*—between the Malayan government and Britain, which transferred sovereignty of the Borneo territories and Singapore to the expanded federation. It followed on legislation in each nation and approval by the territories joining Malaysia.

The West Indies too depended on British legislation to create it. The Rance Report of 1949 had advocated that creation of the federation by order-in-council be under an Act, and that later amendments—as steps

to independence—also be by order-in-council. The federation created in 1957 followed this plan, which had become a standard procedure, being used in Rhodesia and Nyasaland previously. The first step was the *British Caribbean Federation Act*, 1956, which provided for a federation of the West Indies. The constitution was given by the West Indies (Federation) Order-in-Council, 1957, made under the 1956 Act. Britain retained the right to legislate by order-in-council regarding defence, external relations and certain financial aspects of the federation.

The above processes seem simple enough, but indeed embody much of the proper legal approach to constitution-making. A constituent assembly, wholly independent to promulgate a constitution, was not the solution in any of the nations mentioned, unless independence was granted prior to the decisions of such assembly. Also, mere local legislation would not be enough, for generally it is beyond the power of a colonial legislature either to put an end to its own existence or to divest itself of its inherent or acquired powers. Finally, a mere order-in-council was not sufficient, since Britain did not always have full prerogative rights over the units to be federated. Thus the solutions had to be either an Act (as in Australia and Malaya) or an order-in-council under an Act (as in the West Indies and part of Malaya).

It is interesting to note that the order-in-council method suggested in the West Indies, with future amendment by order as well, re-introduces a Canadian problem, that is, having amendment power in the hands of a power outside the federation. S. S. Ramphal, in analyzing the problems this may create, says, "Unfortunately the circle is a vicious one, for the remedy lies in an amendment of the constitution while the malady itself results from the lack of satisfactory machinery for amendment. The experience of Canada offers the very strongest argument for establishing, at the outset, specific machinery for constitutional amendment located in the federal nation. The existence of such machinery does not, of course, deprive the Imperial Parliament of its authority to legislate for the federation, but it does relieve it of a constitutional role for which it could have little relish."¹⁰ Naturally, this example has been the one most avoided by copyists of the Canadian federal scheme.

The Constituent Assembly as a Constitution-Making Device

Perhaps the most appealing method of constitution-making to the democratically inclined observer is the use of a constituent assembly, a body designed solely and partly to create a constitution. Generally, such a body not only drafts the constitution but also has the power in some way to implement it, though Australia is an exception here, in that the legal source of the constitution came not from the assembly but from Britain.

The earliest and perhaps the most prominent use of a constituent assembly was in the United States. When Congress gave its approval for a 1787 convention in Philadelphia—ostensibly to amend the Articles of

Confederation—the states began immediately to organize their delegations. All the delegates were chosen by the state legislatures, and thus the convention was really a gathering of the states. Procedure was thus also based on the idea of state representation, “. . . each state having one vote, seven states making a quorum, and a majority of states present being competent to decide all questions, though the deputies of a state by simply requesting it, might postpone the vote upon any question until the following day.”¹¹ After electing Washington as presiding officer, the convention settled into an organized and highly interesting framework. In the preliminary stage, there was given the report of the Committee on rules, which was set up immediately to settle procedural problems, and the presentation of a plan for an entirely new constitution by the Virginia delegation. The convention then became a committee of the whole, and after hearing a New Jersey plan which was more along the lines of amending the Articles, voted in favour of the Virginia plan. So at this very early stage, the convention was already committing itself to becoming a full constituent assembly rather than a mere amending body.

After this, the general convention began its discussion of the report of the committee of the whole. In this stage was reached the so-called “Great Compromise” on equal representation in the Upper House (Senate) for all states, and general resolutions were made concerning the executive, judiciary and ratification processes. This done, the convention appointed a committee of detail to draw up a constitution conforming to the general resolutions. As this committee worked, the convention took a general recess, and then reconvened to discuss the final report. When the report was given, a committee on unfinished parts was appointed to cover areas not satisfactorily dealt with, or to make changes recommended by the general body, and a committee on style polished the final recommendations. The general convention then reviewed the final draft, added a few final touches and then adjourned *sine die*, to await ratification. In the American system, then, the Constituent Assembly stands at the apex, for it was this body which created the instrument which became the supreme law of the land.

Australia too used an assembly to create its constitution, though of course, legally, the real power of constitution-making lay with Britain. Such a procedure had precedents in Australian experience. In 1891, the Sydney Convention, with delegates appointed by the state legislatures, met “. . . to consider and report upon an adequate scheme for a Federal Constitution.”¹² The convention passed a series of general resolutions as to the type of government and institutions desired, and then referred them to committees which were to draft a constitution. Unfortunately, the draft bill produced here was left to languish because of the inaction of the states. But the 1891 convention not only was the beginning of detailed work for a constitution, but also was the framework which the final convention decided to follow. In the following years public support for a popularly elected convention grew, and the 1895 Premiers Conference recommended a convention composed of 10 popularly elected dele-

gates from each of the states. This conference also recommended that the constituent assembly, "... after framing a draft Constitution, should adjourn for a period of not less than thirty and not more than sixty days, and that it should then reassemble, reconsider the Constitution with any amendments that might be proposed, and finally adopt it with any amendments that might be agreed to."¹³ The local legislatures passed enabling legislation and set up the convention, and by 1897 delegates were elected in five of the six states (Queensland could not agree on the entire question, so was not represented at the convention).

It was clear at the outset that there was to be a new bill, not merely revision of the 1891 draft. But the 1891 procedure was closely followed. A drafting committee of one proposed resolutions and these were debated by the entire convention and adopted by the committee of the whole without detailed consideration. Then the resolutions were passed on to three committees instructed to draft a constitution. As in 1891, the financial and judiciary committees were to report to the Committee on Constitutional Machinery, and finally, the complete report was to go to a drafting committee which was to give effective voice to the decisions of the committees. Interestingly, all the committee sessions were kept secret (as was the entire American convention) so that the public was unaware of the conflicts and compromises which were a part of the final draft. This draft, on completion, was re-submitted to the committee of the whole for more discussion, and then the convention adjourned to allow the state legislatures to discuss the new constitution.

The bill, with proposed amendments, came back to the convention in the fall of 1897, and details were hashed over then, and at a final session in early 1898, at which the bill was re-submitted to committees to rewrite certain clauses. Finally, the convention adopted the bill and submitted it to the states, where the ratification procedure would begin. After an initial failure to ratify, the bill was changed and finally ratified, and then sent on to Britain.

Clearly, Australia in many ways followed the American model, both in the type of constitution produced and in the procedure used to create it. The elements of secrecy, the work of details being done in committee, and the use of recess, seem closely to imitate America, a clear indication of the advanced technique the United States had created as early as 1787.

A far more stormy tale is that of the Constituent Assemblies of India and Pakistan. The Cabinet Mission of 1946 laid down the framework for an assembly. It felt that election of that body by universal adult suffrage would cause confusion and delay, so settled on a method whereby each province would be allotted seats in the assembly according to population, in the ratio of about one representative per one million of population. Further, each province's seats would be divided among the three main communities (Muslim, Sikh and Hindu) and then the members of each community in the provincial legislature would elect its allocated number of representatives. The Mission suggested that after a preliminary meeting, the provincial representatives would divide into three

predetermined groups, settle provincial constitutions and a group constitution if they wished one. Then all the members would once again meet and draw up an overall union constitution. There was also to be an advisory committee on the rights of citizens, minorities and tribes, who were not represented in the Assembly; and the Princely States were to get representatives, also on a population basis, on a formula to be settled by the Assembly and these states.

In summer 1946 a Constituent Assembly Office was established to suggest procedures for the newly-elected body to follow. For example, Sir Benegal Rau, the constitutional adviser, said the first step would be the election of a chairman, followed by the appointment of a committee to draft procedural rules, as was done in America in 1787. There was to be a steering committee to draft resolutions (which Rau equated to the Quebec Conference in Canada) and the election of committees on finance, minorities and to negotiate with the Princely States. When the Assembly met in December, 1946, the Muslim League members did not attend, so the Working Committee began to act without them, and its resolutions in many ways tried to placate Muslim hostility. Two other committees were set up, one to deal with minority rights, the other to examine foreign affairs, defence, communications and finance. By the third session of the Assembly, hopes of appeasing the Muslims faded, and the new resolutions passed by the group, aiming at strong central government, reflected acceptance of partition, as such centrist bias could only alienate the states-rights Muslims.

Finally, partition was agreed upon, by both Britain and the states, and in 1947, the *Indian Independence Act* created two new Dominions, India and Pakistan, each to have a constituent assembly which would also act as an interim legislature. The already composed Indian Assembly continued to meet and quite quickly produced a new constitution. Chronologically, the development was as follows. In early 1947, the Advisory Committee had sent out a highly detailed questionnaire to members of local legislatures covering every possible aspect of a new governmental framework, with copious examples from the procedures in England, America, Canada, and Australia, as well as other non-British federations. In the fall of 1947 the Assembly's Drafting Committee set to work, using much of the material gathered in the questionnaire as well as doing its own comparative study of other constitutions. After a draft was prepared, the Assembly, as in Australia, adjourned to give the nation a chance to examine its proposals. When it reassembled it considered 2,000 proposed amendments (as many as 7,600 had been suggested) and finally passed the completed document in the form of a legislative bill.

It should be pointed out that much of the detail work in India was done by the committees and by the leaders of the Congress Party. The Assembly as a whole did little to modify party or committee recommendations, a fact which helps to explain why the constitution so closely reflects Congress Party views on the composition of government.

Pakistan was given the same basic constitutional machinery as was

India. Its new Constituent Assembly, also to be an interim legislature, was set up on the basis of one representative per one million population, chosen by the provincial legislatures. Adjustments were made from the original elections in 1946 to compensate for population shifts, and to accommodate tribal areas and Princely States. In theory the Assembly was a highly independent body, summoned and prorogued by its own president, and with the power of making its enactments law on being signed by the Assembly president and published in the Gazette of Pakistan. In practice, as in India, the key decisions were made by provincial ministers and the Muslim League Parliamentary party.

The Assembly quickly established a Basic Principles Committee and three strong sub-committees, dealing with federal and provincial constitutions and the distribution of power; the franchise; and the judiciary. The sub-committees were to report to the Basic Principles Committee, which would amend and approve their reports and send on a full interim report to the Assembly. In the Assembly, a Committee on Suggestions would discuss and amend the Committee's report. Two reports — in 1950 and 1952 — were rejected in the House. When the report was finally adopted in 1954, along with a report by the Committee on Fundamental Rights, and then sent to a Drafting Committee, no new constitution could be drawn up, because the Governor-General dissolved the Assembly on the grounds that it had become unrepresentative.

After the Federal Court ruled that there had to be a constituent assembly, under the *Indian Independence Act*, elections were held for a new body in June, 1955. Election was once again indirect, by the provincial legislatures, but no longer on a population basis. Now the formula was to be on the basis of regional representation. As well, the new Assembly was to have its legislative functions suspended until a constitution was made. Procedures were drastically changed. The Assembly was not to set up drafting machinery, and instead, the government decided to prepare its own draft, which was presented by the Law Minister. After relatively brief debate (2 months) the Assembly passed the draft and Pakistan had its first constitution since independence. Of course, the military take-over under Ayub Khan destroyed this 1956 constitution, and the later Pakistani constitution was made by a Constitutional Commission, whose work has been discussed previously.

In general, then, certain procedures seem to mark the rise of Constituent Assemblies. The pattern seems to be to create a general set of resolutions, refer them to committees for detail work, and then have a drafting committee draw up a constitution. This constitution is often submitted to the country as a whole, or to legislatures, for discussion, and then the assembly makes its final changes and adopts the document, usually leaving only ratification to bring the constitution into effect.

The Use of Referenda and the Ratification of Constitutions

The use of a referendum or plebiscite has been one of the devices common in constitution-making, either to ratify a constitution, or to get

popular approval before a constitution is framed, or even, as in the West Indies, to spur dissolution of a federation. In the United States, alone of the states discussed here, was there no use of any form of referendum at any stage of constitutional development.

As a pre-constitutional device, the referendum was used in India, Pakistan and Malaya. When the question arose as to partition of India and Pakistan, the decision was left to the states which would be included, and in one, North-West Frontier Province, there was a referendum of all electors to the local Assembly (in the other states the decision was up to the local legislatures or chiefs). And in 1960, in Pakistan, there was a presidential referendum, which confirmed Ayub Khan in office and authorized him to prepare a new constitution, a mandate which led to the Constitutional Commission of 1960 and the resultant presidential constitution.

In Malaysia, the referendum had a different role. When Singapore was going to join the federation (from which she suddenly withdrew on August 9, 1965), an agreement between the Malayan and Singapore Prime Ministers for merger proposed using a referendum to test Singapore's feeling in the matter. The referendum was unusual in that there was no negative vote possible in the question of merger. The only alternatives were three positive votes for different schemes of merger. As a result, the scheme approved by an overwhelming majority was the one already agreed to by the Malayan and Singapore governments.

At the other end of the scale, the referendum was the device which began the collapse of the West Indies federation. In Jamaica, strong opposition to the federation grew after 1960, and the Jamaican government, in response to this, said the position of the nation in the federation, or, indeed, if it was to remain in the federation, would be decided by referendum. In September, 1961, the referendum was held and a substantial majority of the votes favoured secession from the union. Once the result was accepted by the Jamaican authorities and by Britain, disintegration was assured, for the Trinidad and Tobago government quickly resolved also to withdraw and the federation came to a sudden end before it had even achieved independence.

The area of ratification, which lends itself to numerous methods of approach, also has examples of the use of a referendum, most notably in Australia. Under the enabling legislation which established the constituent assembly, the constitution was to be submitted to the electors to be accepted or rejected by a vote. If accepted by the voters of three or more colonies the constitution could be submitted to Britain with a request for the requisite legislation. In 1898, the first referendum was held, but New South Wales refused the constitution. Since it was a key state, the constitution was not sent on to Britain, for though three other states had approved, an Australia without New South Wales was politically not feasible. After conciliatory amendments were made at a Premiers Conference, the bill was again submitted to a referendum, where it was passed by all five states voting, and sent on to Britain where legislation brought it into effect. Thus ratification in Australia did

not have the legal effect of bringing the constitution into effect, but merely of opening the door for the final legislative step which would occur outside Australia.

In Indian and Pakistan, under the Constituent Assemblies, there was no element of public approval necessary to bring constitutions into being. The Assemblies were sovereign bodies, empowered to create constitutions by the British Act under which they were created. Once the constitution was passed, only as a legislative bill, after three readings, the Assembly would declare it in effect. The consent of the states was really obtained initially in their acceptance of and participation in the Assemblies. True enough, the legal bases of these assembly-made constitutions were the Assemblies themselves, which using their own powers, enacted, ordained and adopted the two constitutions, that of India in 1949 and Pakistan in 1956.

The present Pakistani Constitution had no general ratification, and came into effect after approval by the President and his executive. As no representative assembly existed in Pakistan at this time, there was little chance to obtain wide public approval.

In both Malaya and the West Indies, part at least of the legal source of the constitution lay in the hands of Britain. In Malaya, in 1948, federation was created by an agreement between the sovereign authorities (Britain's king and the Malay Rulers), and by British Order-in-Council. Further changes were based on committee reports, and with agreement by Britain and the Malay Rulers. To create the 1957 independent federation, legislation by Britain, the Malayan Federal Government and the local states was needed, as well as another agreement between the sovereigns. When the Malaysian Federation was created, the constitutions were put into effect by resolutions in Borneo, and Brunei (which decided later not to join) and agreement after a referendum in Singapore, all followed by an agreement signed by all parties. Once this occurred Malaya and Britain passed legislation transferring sovereignty to Malaysia. Thus local approval occurred only through the legislatures or the local rulers, and the final step to create the constitution was not with local participation, but rather, by legislation between the two sovereigns.

The West Indies also had no official ratification procedure, since Britain passed the necessary legislation after local agreement was reached.

But in the United States, full democratic participation marked all constitutional development. The ratification procedure was that in each state the electors should elect conventions to consider and ratify the constitution. Once nine states had so ratified, the constitution would be in effect for those states ratifying. As Australia did later, America required unanimous consent of the ratifiers to make the constitution operative, even though fewer than the full number of states could bring into being a new nation under a new document. One reason ratification by state legislatures was avoided was to prevent later legislation withdrawing consent. The framers felt that a resort to the people was a resort to the ultimate source of authority in a nation. The American draft bill was

sent to the Congress, which did not itself pass on the document, and avoided facing the issue of how far the convention had gone from its terms of reference. After considerable debate — which led to the addition of the Bill of Rights as the original amendments—the state conventions did ratify and a new nation was brought into being by summer of 1788.

It can safely be said that the United States, by virtue of its real independence, most consistently included the people of the land in its constitutional formation. Their legislators appointed the convention delegates, and then they themselves brought the constitution into effect through specially elected conventions. Perhaps Australia, by using a referendum, included the public even more, but in Australia the constitution still, legally, was implemented by Britain and not within Australia.

Conclusions

The process of constitution-making clearly can follow many paths, and no solutions are easy. Pakistan was created out of religious conflict, and it was only after the failure of its democratic institutions that it had a viable constitution, though one created by the edict of a semi-dictatorial president. The West Indies has collapsed as a federation, primarily because its constitution, designed to placate dissident local elements, was too weak to support any federal government, particularly on the financial and commercial levels. And Malaysia, beset with conflicts between Chinese and Malays, on August 9, 1965 lost Singapore as a member state. The other states here discussed — the United States, Australia and India — all reached constitutional success more easily than the others, though in each, conflicts threatened to prevent solution for a time.

But in each nation it is clear that, in some way, the public must participate in the constitutional process. This can be done, as in highly sophisticated states such as America or Australia, by participation in referenda or in forming constitutional conventions, or as in India by a combination of colonial conferences and direction by Britain with local election of a constituent assembly. In the least developed colonies, participation has been less intimate, but has been assured by having local leaders, not only politicians, draw the shape of their own destinies as far as possible through conferences and committees. And even here the commissions of inquiry set up have often touched popular feeling outside the scope of any conference.

Thus in some way the people help to create their own governing instrument, a result which, for the democratically inclined, is surely the only reasonable one.

Footnotes

¹M. Farrand, *The Framing of the Constitution of the United States*, (New Haven, Conn. 1918), p. 3.

²H. C. Hockett, *The Constitutional History of the United States, 1776-1826*, (New York, 1961), p. 198.

- ³J. Quick & R.R. Garran, *The Annotated Constitution of the Australian Commonwealth*, (Sydney, 1901), p. 111.
- ⁴C. B. Swisher, *American Constitutional Development*, (Cambridge, Mass., 1943), p. 30.
- ⁵R. L. Schuyler, *The Constitution of the United States: A Historical Survey of its Formation*, (New York, 1952), p. 127.
- ⁶R. J. Watts, *Recent Experiments in Federalism in Commonwealth Countries, A Comparative Analysis*. Doctoral thesis submitted to the Board of the Faculty of Social Studies of Oxford University, Trinity Term, 1962, p. 348-49.
- ⁷Government of Federation of Malaya, *Malayan Constitutional Documents*, 2nd ed., vol. I, (Kuala Lumpur, 1962), p. XII.
- ⁸W. H. Moore, *The Constitution of the Commonwealth of Australia*, 2nd ed., (Melbourne, 1910), pp. 66-67.
- ⁹L. A. Mills, *Malaya: A Political and Economic Appraisal*, (Minneapolis, 1958), p. 37.
- ¹⁰S. S. Ramphal, "Federal Constitution-Making in the British West Indies," *The International and Comparative Law Quarterly* vol. 2, part 2, April 1953, (London, 1953), p. 197.
- ¹¹Farrand, *op. cit.*, p. 57.
- ¹²Moore, *op. cit.*, p. 41.
- ¹³Quick & Garran, *op. cit.*, p. 159.

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3. Sir B. Rau, *India's Constitution in the Making*, ed. by B. S. Rao, (Madras, 1963)
(Rau was the adviser to the Constituent Assembly and the book is composed of many of his proposals, some followed by the Assembly, and all interesting as indicative of the line of thinking adopted by the framers of the constitution.)

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The Proposal
For a Federal Capital Territory
For Canada's Capital

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September, 1966

Many of the briefs to the Royal Commission on Bilingualism and Biculturalism advocated the creation of a federal district in which the bilingual-bicultural character of Canada would be symbolically reflected. As a result, the Advisory Committee decided to commission Professor D. C. Rowat of Carleton University to prepare a study for them on this question. Professor Rowat submitted his report to the Committee in September, 1966. The knowledge of the existence of such a report stimulated a great deal of further discussion and research on the problems of a capital district by the federal and Quebec governments and by citizens' groups in the Ottawa-Hull area.

Professor Rowat's report is a broadly based study in which the question of a federal district is approached from the point of view of three objectives:

1. The effective implementation of the national capital plan; that is, a desirable development of the community through such means as a comprehensive zoning law and the establishment of a so-called Greenbelt and reform of local administration.
2. The development of Ottawa and Hull as an area symbolic of the nation rather than as mere regional centres in Ontario and Quebec.
3. The creation of a truly bilingual environment in the Ottawa area which would make the capital an attractive place for French Canadians to work.

The report concludes that these objectives could be met by means of greater co-operation among the Ontario, Quebec, and federal governments. Since this co-operation cannot be assured, Professor Rowat thinks that these objectives would more likely be achieved by the creation of a federal capital territory.

Preface

Ever since Confederation there have been proposals that the area surrounding Ottawa should be turned into a federal capital territory, like those that have been created for other federal capitals such as Washington and Canberra. It has been argued that, as a matter of principle, the national seat of government of a federal country should not come under the control and laws of a single municipality in a single province. However, the case for a federal territory did not become really strong until after the Second World War, when Canada's rise to a middle power on the world stage gave her people a greater interest in developing a capital city as a symbol of the nation.

The wartime growth of the civil service and the expansion of population in the whole Ottawa-Hull metropolitan area made it clear that the problems of the future development of the capital could not be solved simply by arrangements worked out between the federal government and the city of Ottawa. The federal government therefore decided to have a Master Plan prepared for the future development of the national capital, and since then has devoted considerable effort and money, through its agent the National Capital Commission (formerly the Federal District Commission), to the implementation of the Plan. Because the federal government has no direct governmental control over the capital area, however, numerous difficulties have been encountered in completing the Plan. It has become clear that the Plan cannot be fulfilled under existing arrangements because it depends for its implementation on the agreement and co-operation not only of the Governments of Ontario and Quebec but also of the numerous municipalities in the Ottawa-Hull metropolitan area. Their interests often do not coincide with those of the federal government, and their financial resources and administrative capabilities are often inadequate to meet the tasks of executing the Plan. There has therefore been a continuing interest in the proposal for a federal capital territory as a solution to this problem.

Recently, the proposal has been given additional support from another source. It is argued that a federally governed capital territory could be made genuinely bilingual and bicultural, and would become a model in this respect for the rest of Canada.

Since no adequate history or analysis of the proposal has as yet been written, the Ontario Advisory Committee on Confederation has asked me to prepare this brief study.

Because of the confusion in the use of terms applied to the national capital area, it may be useful to clarify at the beginning what the proposal means. Because of the division of powers between the central government and the provinces in the *British North America Act*, the former has no control over the federal capital or its surrounding area regarding any matter which comes under provincial or municipal jurisdiction. For any such matter Ottawa and its adjacent municipalities are governed by the laws of the province of Ontario, while Hull and its ad-

jacent municipalities are governed by Quebec law. This means that the central government has no direct power to impose its will on the capital district, or to implement any plan it may have for it, without the agreement and co-operation of the provincial and municipal governments that may be affected. The proposal for a federal territory, on the other hand, would require the ceding of land on the Ottawa and Hull sides of the Ottawa river by the governments of Ontario and Quebec to the federal government, and the whole area would come directly under the jurisdiction of the federal parliament. It is important to note, however — because of the frequent assumption to the contrary — that the proposal does *not* necessarily imply the abolition of all municipalities in the area, the loss of voting rights, or *direct* administration by the federal government, as in Washington.

Provincial laws and court systems would no longer apply to the federal territory, except by agreement between the federal government and the provinces concerned, and all normal provincial and municipal services and taxes would have to be provided for under federal law. The proposal usually assumes that the boundaries of the new federal territory would approximate those of the present National Capital Region, as defined for the purposes of the National Capital Plan and for the activities of the National Capital Commission.

Because the District of Columbia is often referred to as the federal district, the terms “federal district” and “national capital district” are often used in Canada to describe this proposal. Unfortunately, however, the terms “federal district” and “national capital district” were also adopted to describe the area of interest and planning for the old Federal District Commission. In order to avoid confusion I have therefore chosen to use the term “federal territory” in reference to the proposal for a capital area coming exclusively under the jurisdiction of the federal government.

The proposal is similar to but not as far-reaching as another one made recently: that the National Capital Region should be turned into an eleventh province. This idea will also be considered briefly in the present study, because of its similarity to the proposal for a federal territory.

For information on the history of the capital, I have relied heavily on Wilfrid Eggleston’s invaluable *The Queen’s Choice*. I should like to thank officials of the National Capital Commission and the Cities of Ottawa, Hull and Eastview for their help in providing information on recent developments in the National Capital Region.

I hope that this study will help to solve the problem of reconciling the interests of the local residents and those of the people of Canada, in the government and in the future development of the nation’s capital.

D.C.R.
Ottawa,
September, 1966

The Proposal For a Federal Capital Territory For Canada's Capital

I. The Origin of the Problem

It was mainly an accident of history that the federal government's present area of interest for the development of the national capital covers two cities in two different provinces as well as territory beyond the cities in both provinces. When Ottawa was chosen as the capital city, scant attention was paid to the fact that part of the urban population lived across the river in a different province. It was not at that time realized that building bridges across the Ottawa river would to a large extent remove the river as a barrier between the two populations on each side, and that the whole area would develop into one vast interdependent urban complex. Nor was it thought that the relationships between the central government and the City of Ottawa would be at all complicated. Those were the days before the age of the welfare state, when the civil service was extremely small. It was therefore expected that the federal land on "Barracks Hill" would be sufficient to contain the Parliament buildings of all federal administrative offices for the foreseeable future. Perhaps for this reason no one at the time of Confederation seems to have seriously proposed a federal territory for the capital, despite the precedent established by the creation of the District of Columbia long before this in the United States.

The difference between the choice of Washington and Ottawa as capitals is that Washington had been created as a new capital after the formation of the United States, whereas Ottawa was a thriving lumber town and had already been chosen as the capital of the Province of Canada before Confederation. Since Toronto and Quebec were the obvious choices for the newly created provinces of Ontario and Quebec, it seemed logical to leave Ottawa as the capital of the new Dominion, and simply to place the new federal parliament and its administration in the buildings that had been constructed for the parliament of the former Province of Canada.

There was an inherent flaw and source of future friction in this arrangement, however, though it seems to have aroused little or no apprehension at the time. "The point is", as Wilfrid Eggleston has pointed out, "that the constitutional position of Ottawa as the capital was materially altered by the decision of 1864-67; and the change in that particular respect was a retrograde step. As capital of the *Province* of

Canada, no serious jurisdictional problems could possibly arise between the Crown and the Town in Ottawa, for the municipality of Ottawa would have continued to be under the direct control of the provincial government on Parliament Hill. Nor would any problems arise if government activities spread into adjoining municipalities or even across the Ottawa river into Canada East, since between 1840 and 1867 the Ottawa river merely separated two geographical divisions of one province.

"But Confederation changed all that. Now Ontario and Quebec were autonomous states within their defined powers, and these powers included the exclusive control of municipal and local matters. Now Ottawa, by the *B.N.A. Act*, was a federal capital located *within a provincial municipality*, and the latter took its orders not from Parliament Hill, but from Queen's Park, 275 miles away, and from a jurisdiction separate and autonomous and independent in broad respects from the central federal government. And the Ottawa river had once again become a boundary between two autonomous governments."¹

Hence any extension of the federal government's interest beyond the immediate boundaries of Parliament Hill was bound to cause differences of interest and delicate relations with the City of Ottawa, and ultimately with the City of Hull, the municipalities surrounding these cities and the provincial governments of Ontario and Quebec, under whose control they came for all provincial and municipal purposes. Moreover, the Ontario side of the river was mainly English-speaking, Protestant, and governed under the English common law, while the Quebec side was soon to become mainly French-speaking and Roman Catholic, and was governed under the radically different Quebec civil code, which had been inherited from French law.

As long as the interests of the federal government in the capital city remained largely confined to Parliament Hill or even mainly to the City of Ottawa, the difficulties inherent in this situation did not become acute. In fact, they were not revealed for many years, because the majority of the people and of Parliament remained unimpressed by the early declaration of one of the Fathers of Confederation, John Hamilton Gray, that the capital city "might fairly rest its claim for support upon the people of the Dominion."²

The reason for this lack of interest by the people of the Dominion in their responsibility for the capital city, least of all in Gray's proposal of a federal territory for Ottawa, is explained by Wilfred Eggleston (p. 147) in this way:

When a capital city is created from the ground up, in hitherto unoccupied territory, as at Canberra and Brasilia, the national or federal government must perforce proceed to establish a new community from scratch. There are no taxpayers yet to levy upon for municipal services, and the central government must construct and operate and pay for its own. In such circumstances, a "federal district" comes into being almost automatically.

But such was not the case with Ottawa. It was already a city of 18,000 persons by 1867. The rudiments, at least, of essential municipal services were already in existence. There was a well-established tradition of self-government in municipal matters, long predating Confederation. The Government of the Province of Canada in 1859 never proposed to set up a

separate or rival municipality, when it began erecting the Parliament Buildings. Nor did the Government of the Dominion of Canada in 1867. It is true that pending the strengthening of Ottawa's municipal services the Canadian Government undertook to provide some utilities of its own. In 1859, the City of Ottawa still had no water supply except that provided by private carriers freighting water from the river. The Provincial Commissioner of Public Works put in a small plant down below the Library, to pump water for the buildings. A separate sewage system was built by the Provincial Government when the buildings were under construction. Some elementary fire protection was also provided, and the policing of the Hill was under provincial and then federal control.

The early government buildings were physically confined to Parliament Hill, which from the beginning had been Ordnance Land, and which had never been taxed for municipal purposes. Since at first the government buildings even provided their own utilities, the people and Parliament of Canada felt no great responsibility for the welfare of the city. Nor was the City Corporation very conscious of the costs or inconveniences arising out of the presence of a seat of government. In fact, the activities of the federal government did not impinge very much on the municipality for the first fifteen years.

But the existing arrangements contained an incipient conflict of interests between Crown and Town. "In several respects," Eggleston has observed (p. 147), "the effect of the planting of the Canadian capital within the municipal limits of Ottawa was not unlike that of the location of a large private corporation. Both operations require massive new construction, create new jobs, and, before long, additional municipal burdens. But in two vital elements there is a sharp contrast. Government properties are given permanent exemption from municipal taxation by the terms of the *British North America Act*, and governments possess contingent powers no private company ever enjoyed. One is the power of expropriation." Before long the federal government would find it necessary to expand beyond the limits of Parliament Hill into the heart of the business section of Ottawa. Then the municipal services needed for the new government buildings would begin to lay heavy new burdens on the City and the difficulties inherent in placing the federal capital within the confines of a municipality controlled by a single province would begin to be revealed.

II. Early Attempts To Meet the Problem

The problem created by the location of the federal capital within the boundaries of a municipality governed by provincial law, and immediately adjacent to another municipality governed by the laws of a different province, did not become fully apparent until the federal government began taking an interest in the beautification and future development of the capital.

It was almost the turn of the century before the government began to recognize its special responsibilities for developing the area in which its seat of government was situated. The 1890's had seen a great quickening of interest throughout North America in city architecture and plan-

ning. In June of 1893, while leader of the Opposition, Wilfred Laurier had stated that Ottawa should become the "Washington of the North", and this idea had begun to fire people's imaginations toward the future development of a great capital city. But until after 1895 — the end of the "Great Depression" — the federal government was chronically hard up. Just before Laurier's accession to power in 1896, two city councillors, Fred Cook and Robert Stewart, succeeded in getting Ottawa's Council to appoint a committee to make a study of the principal capitals in the British Empire, in order to demonstrate to the federal government both its opportunities and its obligations for the development of the federal capital. In 1897, the City made use of this information in a petition to the Laurier Government. The petition pointed out that the United Kingdom Government paid municipal rates to London on all its properties, including the Houses of Parliament, and noted that the tax-exempt properties owned by the Crown within the City of Ottawa in 1897 were valued at \$14 million. Also the City had received no compensation from the federal government for the City's large outlay on public works, in contrast with the practice in other parts of the world. This petition no doubt had considerable influence upon the government, for in 1899, it initiated an annual grant to Ottawa of \$60,000 to meet these claims. It also created the Ottawa Improvement Commission, which consisted of four commissioners, three chosen by the federal government and one by the City of Ottawa, and which began its work with an annual grant of \$60,000.

In the early years of this century the Ottawa Improvement Commission did much good work in beautifying Ottawa's parks and driveways. But, as Eggleston has noted (p. 166), it was "handicapped by insufficient funds, restricted powers, and possibly, by lack of imagination. As it was not created as a town planning body, and in any event lacked authority in that field, its remedies were bound to be superficial rather than basic." Although it had hired an architect, F. G. Todd, who had submitted a plan for the future development of the Ottawa area as early as 1903, architects and others began to realize that the Ottawa Improvement Commission was incapable of meeting the problem. In 1911, for example, a deputation of members of the Royal Architectural Institute of Canada presented a brief to the new Prime Minister, Robert Borden, complaining about the lack of planned development of the capital, pointing to the difficulties of finding a satisfactory site for new government buildings, and to the still-existing need for relocating the railways and amending the street system of the city. As a result, in 1913 the Borden Government appointed a Federal Plan Commission, chaired by Herbert S. (later Sir Herbert) Holt of Montreal, with five other members, including the mayors of Ottawa and Hull. The terms of reference instructed the Commission to "draw up and perfect a comprehensive scheme or plan, looking to the future growth and development of the City of Ottawa and the City of Hull, and their environs. . . ." This was the first time that the federal government had officially recognized any responsibility for the development of the Hull side of the river or even of the

environs of Ottawa. The Holt Commission, which reported in 1915, developed a comprehensive and impressive plan for the future development of Ottawa, Hull, and the surrounding area. It recognized that the power to implement the far-reaching proposals it had made (which included the reconstruction of a good deal of Ottawa) came constitutionally under the jurisdiction of the Governments of Ontario and Quebec and of the municipalities in the area. Foreseeing the difficulties of divided jurisdiction, the Commission proposed the outright creation of a federal district and federal control over local government.

Unfortunately, the report of the Holt Commission was badly timed, coming as it did in the midst of the First World War, and just at the time that the Parliament Buildings burned down. The building, which burned on February 3, 1916, required ten years and \$12 million to rebuild, to enlarge and to furnish. As a result, except for raising the annual grant to the Ottawa Improvement Commission in 1917 from \$100,000 to \$150,000 a year, for ten years nothing much was done about the recommendations in the report, even though Noulan Cauchon, planning consultant to the City of Ottawa, had in 1922 produced an updated revision of the plan.

Cauchon had proposed, as his administrative solution to the problem, a federal commission which would have authority over the physical features and public utilities of a "federal district", but which would preserve provincial and municipal autonomy in other respects. Being essentially an architect and planner, he did not seem to realize that, constitutionally, even the federal Parliament did not possess this authority and so could not delegate it to a commission. Hence the commission would not have the power to carry out the far-reaching plans for redevelopment that he and the Holt Commission had proposed. Those who read his report may have been led to believe that all that was needed to complete the plans was for the federal government to establish a more powerful body with jurisdiction over an enlarged "federal district", and that therefore the creation of a federally governed territory would be unnecessary. At any rate, in 1927 the Ottawa Improvement Commission was reconstituted as the Federal District Commission, with broadened powers and the extension of its interests into Quebec. The (by then) eight members of the older Commission were increased to ten, of which one was to be a resident of Hull. Thus, for the first time, Hull was officially recognized as being part of the federal capital.

The next year a situation arose in the heart of Ottawa which forced the federal government to intervene. It led to a reduction in the new annual grant from \$250,000 to \$200,000, and the provision of the capital sum of \$3 million to create the open space now known as Confederation Square. The old Russell House Hotel at that time was being demolished, and the owners were proposing to erect a new modern hotel on the site. In order to preserve the site as an open space, the federal government had to act quickly to enable the Commission to expropriate it and other properties needed to open up the area. However, aside from this major

expropriation to create a vista of the Parliament buildings from the south-east, the Commission acted essentially as a parks and driveway development commission. In the twelve years from 1927 to 1939 the F.D.C. parks area was enlarged to 900 acres, and the length of the federally-owned and maintained driveway was increased to 22 miles, including an extension across the Champlain Bridge into Quebec. But the constitutional limits to the F.D.C.'s powers, the long depression of the 1930's, and the outbreak of war discouraged any more ambitious attempts to carry out the Holt Report of 1915.

Meanwhile, the growth of the welfare state in the 20's and 30's had caused a gradual encroachment by the federal government into the heart of Ottawa, for buildings to house its administrative personnel. The great influx of military and civilian personnel connected with the Second World War greatly accelerated this encroachment. The total space in the city rapidly being occupied by the federal government through construction, purchase or rental could not help but create tensions and difficulties between Crown and Town. Eggleston (p. 177) lists a total of 23 permanent buildings that had been erected between 1918 and 1945 and notes that no fewer than 14 wartime so-called "temporary" buildings had been built in assorted locations throughout Ottawa. These properties of course were all tax-exempt, and often occupied the space of former businesses that had been paying property and business taxes to the City. At the same time they required the continuing provision of all normal municipal services. The growing number of foreign embassies and headquarters of Crown corporations, which were similarly tax-exempt, increased the problem.

This was a problem which could be largely solved by larger grants to the City. But the problem created by the constitutionally restricted powers of the Federal District Commission to redevelop the cities of Ottawa and Hull and their surrounding area, could not be so easily solved.

III. The Evolution of the National Capital Region, 1944-58

The federal government responded to Ottawa's claim for "better fiscal terms" by setting up a special Joint Committee of the Senate and House in 1944. Although the Committee did not accept the City's contention that an annual payment of nearly \$1,600,000 was needed to offset the loss of taxes from government tax-exempt property, it did recommend that for a period of five years the annual grant to Ottawa should be raised from \$100,000 to \$300,000, and the government accepted this recommendation. Part of the government's difficulty was that it could not pay adequate compensation to Ottawa without recognizing a similar responsibility for its tax-exempt properties in other cities of Canada. In 1949, however, it recognized these responsibilities by passing the *Municipal Grants Act*, and by 1955 Ottawa was receiving under this Act an amount substantially larger than that requested by the City in 1944. The

government also agreed to pay grants in lieu of taxes on embassy properties and required Crown corporations to pay similar grants (though the City still complains that some Crown corporations refuse to pay normal business taxes).

Although the Committee of 1944 devoted most of its attention to the City's financial problem, it could not avoid recognizing the larger problem of how to redevelop the national capital under divided jurisdiction. In its final report it recommended "that the powers of the Federal District Commission be increased, and its personnel be enlarged to include, not only representation from the Ottawa area, but of the people of Canada as a whole. The name Federal District Commission might even be changed to include the idea of a National Capital."³ But the Committee felt that the only permanent solution to the problem might lie in the creation of a federal territory, as shown by these words from its report:

From the observations made by this Committee during its investigations, it is clear that with the growth of Canada and the corresponding expansion of its governmental activities, the administrative problems arising between the City of Ottawa and the Federal Government will become more complex and more difficult of settlement than they are now. As an indication of that prospect we would merely stress the inevitable difficulty that will arise in connection with the present reckless system of sewage disposal in the Ottawa river, the both banks of which within the most directly affected area, are the property of the Dominion of Canada.

It is not the purpose of this Committee to make definite recommendations to the Government regarding the future character of a Federal District to embrace the park area and the municipalities on either side of the Ottawa river . . . We are of the opinion, however, that this long-term project should be committed by the Government to a special commission of experts for investigation and report, involving as it would the possession of expert professional knowledge and the need for extended travel to study the plans and workings of federal capital districts in other countries.⁴

In 1928, at the time of the debate in the House of Commons over the expropriation of the site of the old Russell House Hotel, Mackenzie King had expressed his conviction that the creation of a federal territory was the eventual solution to the problems of the national capital. Hence it is curious that his Government did not take up this recommendation of the Committee of 1944. It may be that his view was changed in this respect by the opinion of M. Jacques Greber, the French town planner whom he had invited to Ottawa in 1937 to prepare plans for the development of Confederation Square. Eggleston reveals (p. 184) that at that time they had some discussions on the desirability of a federal territory and the French adviser said his own studies of such authorities in other parts of the world led him to believe that this was not the answer. M. Greber, of course, had not lived under a federal system of government and was not fully conversant with the difficulties of divided jurisdiction.

In any case, nothing was done about the Committee's proposal for a thorough study of the constitutional and administrative problems and the idea of a federal territory, even though the Prime Minister had by then become convinced that the redevelopment of the entire national capital area should be undertaken as a national memorial of the Second World

War. Apparently he had been persuaded that this project could be brought to fruition without the creation of a federal territory. Instead, he brought M. Greber to Ottawa at the end of the war to prepare a new plan for the capital, and an Order-in-Council was passed in 1945 defining some 900 square miles as the National Capital District for purposes of this plan.

The proposals for redevelopment contained in the resulting National Capital Plan, completed in 1950, were much more far-reaching than those of the earlier Holt Report. Since in the meantime Ottawa and Hull had developed without a plan and the National Capital District now took in many municipalities surrounding Ottawa and Hull, the problem of correcting the errors and implementing the Plan would be that much more difficult.

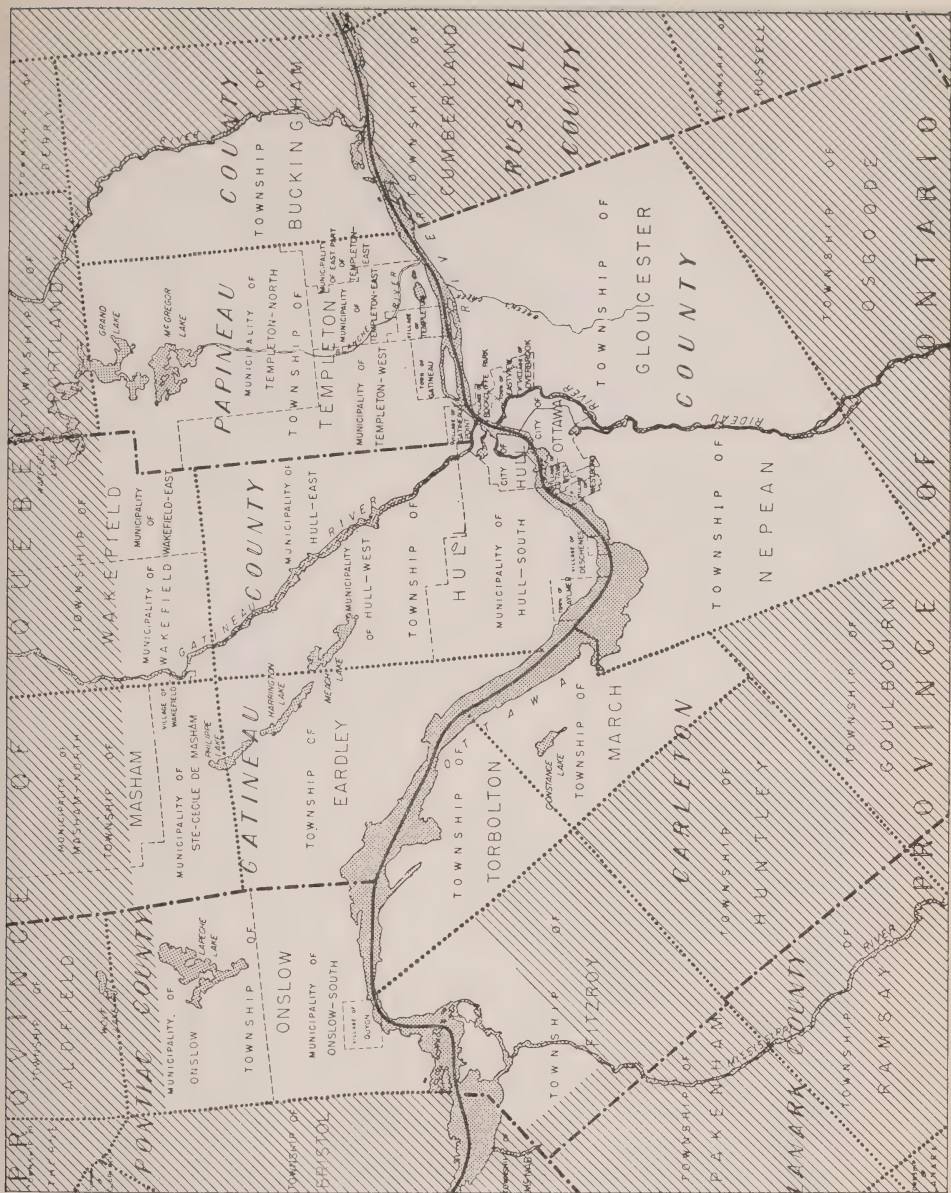
Perhaps because of his lack of knowledge of constitutional law and political realities, M. Greber seems to have fallen into the trap into which many other purely technically trained town planners have fallen, of not distinguishing clearly between the preparation and the fulfilling of a plan. In 1939, in a preliminary report to the Prime Minister he had pointed out his lack of qualifications for discussing the administrative problem, but at the same time had left the inference that a comprehensive plan could be fully implemented through co-operation and co-ordination between the many interested jurisdictions:

I understand that the question may be considered of eventually creating a District Capital for the Dominion of Canada, along the principle of the District of Columbia in the United States.

As I have no qualification for discussing the need for a Federal District Capital from the political or general administration viewpoint, I beg to submit to you the following remarks, limited to the *purely city planning problem*.

Several examples of regional planning and comprehensive by-laws on city development, in Europe and in America, show that this particular problem, even when it affects a large number of municipalities, may be *successfully studied and solved without deeply changing their respective administrations*, but by organizing, only for the purpose of their *better co-ordinated planning and common zoning and building legislation*, a central Planning Board, specially appointed to elaborate and to control the execution of the plans and the enforcement of the by-laws.⁵

In these words, M. Greber reveals that he failed to make the vital distinction between the elaboration of plans and the control of their execution. Further on in this report, he drew encouragement from the experience of France and the United States with regional planning, but in doing so ignored the fact that France did not have a federal government, and that the regional plans in the United States to which he referred (The New York Regional Plan and the Philadelphia Tri-State Planning Corporation) did not include the federal government. By stating that these regional authorities were "entrusted with a *purely technical work, without interfering with the existing Town or State administrations*,"⁶ he was again failing to make a distinction between their success at preparing a plan and the governmental problem of ensuring its completion.



ADMINISTRATIVE BOUNDARIES WITHIN THE NATIONAL CAPITAL REGION

LEGEND

- INTERPROVINCIAL BOUNDARIES
- - - COUNTY BOUNDARIES
- TOWNSHIP BOUNDARIES
- - - - MUNICIPAL BOUNDARIES

1948

THE NATIONAL CAPITAL
PLANNING SERVICE

J GRÉBER — CONSULTANT

0 1 2 3 4 MILES

It seems clear that the federal government was greatly influenced by these views. The only significant administrative change it made in preparation for the capital's redevelopment was to arrange for the kind of planning body M. Greber had recommended. This was a National Capital Planning Committee, with local and national representation. It was created merely by a by-law of the Federal District Commission. In 1946 the latter's membership was increased from ten to twenty, to include a representative from each province, and it was given additional powers, including authority over the site and architecture of federal buildings. But basically its status remained unchanged.

Both the Master Plan preliminary and final reports of 1948 and 1950, which were prepared by the National Capital Planning Service under M. Greber's direction and approved by the National Capital Planning Committee, reprinted M. Greber's preliminary report of 1939. The final report recommended no change in the status and powers of the Federal District Commission, and in its section on "legal matters" clearly indicated that it was depending upon the co-operation of the Governments of Ontario and Quebec and of all the municipalities in the new National Capital District for the successful implementation of the Plan. But the problem of what would happen if these governments did not co-operate was never squarely faced. The fact is that the National Capital Committee was purely an unofficial body so far as these governments were concerned, and neither it nor the Federal District Commission had power to enforce any part of the Plan which did not lie on federally owned territory.

Because the City of Ottawa co-operated whole-heartedly in taking the initial action necessary to control the development of its urban fringes and to preserve the Plan's proposed Greenbelt around Ottawa, this difficulty did not become revealed for some time. After the appointment of the National Capital Planning Committee, Ottawa took steps under the *Ontario Planning Act* of 1946 to establish in 1947 the Ottawa Planning Area Board, whose planning area included not only the City of Ottawa, but also the Town of Eastview, the Village of Rockcliffe Park and the Townships of Gloucester, Nepean, March, Torbolton and Fitzroy — all the municipalities that were within the boundaries of the Ottawa side of the National Capital District. Membership on the Board was weighted in favour of the City, with usually five from Ottawa, one from the Federal District Commission, one from the Central Mortgage and Housing Corporation, and only two from the surrounding municipalities (Gloucester and Nepean). The City also applied to the Ontario Municipal Board to annex those parts of the Townships of Nepean and Gloucester which lay within the inner ring of the proposed Greenbelt. But it met opposition from Nepean and also from the County of Carleton. Because of this, and perhaps also because the boundaries of the Greenbelt had not been definitely established at this time, the size of the original area asked for was reduced by the Ontario Board. As a result, a considerable gap was left between the new southern boundary of the

City and the inner ring of the Greenbelt in Nepean. Gaps were also left at the western boundary of the City, and at the eastern boundary in Gloucester. Other effects of the annexation, which became effective on January 1, 1950 were to enclose Rockcliffe Park and Eastview completely within the boundaries of the City, and to multiply the City's area by five times.

The effective completion of a city plan requires a comprehensive zoning by-law, or at least zoning by-laws for those parts of a municipality which are undergoing rapid subdivision and urban development. The older City had had no Master Plan, no detailed plan of land use, and no comprehensive zoning by-law. Although Ottawa was now at least in a position to begin work on these matters within its own territory, none of the other municipalities in the area had zoning by-laws or any facilities for implementing the National Capital Plan. The Ottawa Planning Area Board was staffed by the City's Planning Department, and tended to ignore the planning needs of the surrounding municipalities. Although the Board had approved in principle the proposals of the National Capital Plan for the Ottawa side of the river, it did not have adequate facilities to control urban development, especially beyond the boundaries of the City and in particular in the area designated as the Greenbelt. Nor at that time did it have any facilities to plan and carry out redevelopment. On the Hull side of the river, no adequate planning machinery existed for implementing that side's share of the Plan, nor was any created. As Eggleston has pointed out (p. 200), "When work began on the Master Plan not a single one of the municipalities in the capital region had 'land use plans' or effective zoning plans. *Vis-a-vis* the local authorities, the Federal District Commission possessed only the power to advise and persuade. Lacking direct control, the Commission had to seek to attain its objectives by oblique and indirect means."

Yet when the Plan was presented in 1950, the Ottawa metropolitan area was on the verge of one of the most dramatic periods of urban expansion that it had ever seen. Since there existed no adequate machinery to control this development, the result was urban sprawl on both sides of the Ottawa river, and inevitably, developments that went contrary to the Plan. The most striking example of this was in the Township of Nepean. For financial reasons developers tended to jump beyond the new boundaries of the City and even into the proposed Greenbelt. Nepean had a population approaching 25,000 in 1949. When the annexation was complete Nepean was left with an almost exclusively rural population of only 2,500. Yet in the next five years the outflow from the city again raised the population to 8,000, largely urban. The Township of Gloucester showed a similar pattern. Its population was cut from 10,000 to 5,000 by the annexation, but by 1956 its population had again jumped back to 11,500. Indeed the pace of urban subdivision in the proposed Greenbelt proceeded so fast that it forced the federal authorities to redefine the Greenbelt and to extend its inner boundary, making it in places even farther from the boundaries of the City. The fact was

that the Greenbelt was nothing more than an attractive dream drawn on a map, and it would never be realized unless something were done quickly.

The difficulty, inherent from the beginning, was a genuine conflict of interest between the federal and local governments in the area. While the federal government was interested in developing a national capital worthy of Canada, the local governments were, individually, incapable of meeting this challenge, especially since the financial burdens fell upon them unequally. There was a similar but lesser conflict of interest between the federal and provincial governments. So long as the provincial governments remained responsible to their electors in the national capital area, they could not be expected to turn a deaf ear to representations from local citizens desiring action contrary to the Plan. Nor could they be expected to have any very positive incentive to create the governmental and planning machinery that would be necessary to enforce the Plan.

As a result of these difficulties another parliamentary Joint Committee was appointed in 1956, and the evidence given before that Committee well illustrates this conflict of interests, especially regarding the preservation of the Greenbelt. "Unlike a zoning by-law, which is for the general benefit of persons within the zoned area, a Greenbelt, if it has any benefit, is for the benefit of those outside the zoned area, is for purposes wholly dissociated with the enhancement of the value of the ratepayers' property," the Reeve of Nepean told the Joint Committee. "A municipal council is only the instrument of its ratepayers and it is wholly beyond the realm of practicability to expect any municipal council so to act in direct opposition to the interests of its ratepayers. If some national policy requires a Greenbelt, with which suggestion Nepean does not agree, then the national government must adequately compensate the Nepean ratepayers. Certainly, it must not expect the Nepean Council under the phony excuse of 'zoning', to deprive its ratepayers of the present values of lands which they and their forefathers have held for generations."⁷ Reeve Moodie might also have admitted, had he been pressed, that neither did it wish to deprive its ratepayers of *future* values which might result from subdivision.

In her evidence to the Committee, Mayor Charlotte Whitton of Ottawa explained the failure of the Ottawa Planning Area Board to prevent undesirable development:

In cases where subdivisions are proposed far in advance of normal development the Ottawa Planning Area Board has refused to recommend approval. In these cases, an appeal to the Ontario Municipal Board is open to the developer, and, unfortunately, most of the appeals which have been taken have succeeded and the Ontario Municipal Board has recommended to the Minister of Planning and Development the approval of the plan of subdivision, notwithstanding the opposition of the Ottawa Planning Board. This is a result which the City deplures, but which it is powerless to prevent . . .

The Ottawa Planning Area Board has, with four exceptions, three of which were insignificant, consistently refused to approve of urban-type subdivisions in the area designated as a rural-urban zone (Greenbelt) by the Ottawa Planning Area Board. Here again, appeals have been taken by developers

to the Ontario Municipal Board, and that Board, refusing to recognize the rural-urban zone as having any special character, has on several occasions approved of large urban-type subdivisions in this transition area.⁸

While there was a special conflict of interests between the federal government and Ottawa on the one hand, and the outlying municipalities and the Government of Ontario on the other, there was also a normal and natural conflict of interest between the federal government and all of the municipalities in the area, as explained by Mayor Whitton. She pointed out that the National Capital Plan meant changing the actual physical setting and development of the community but that this could not be done to the disregard of the overriding responsibility of the municipal authority to the people of the community:

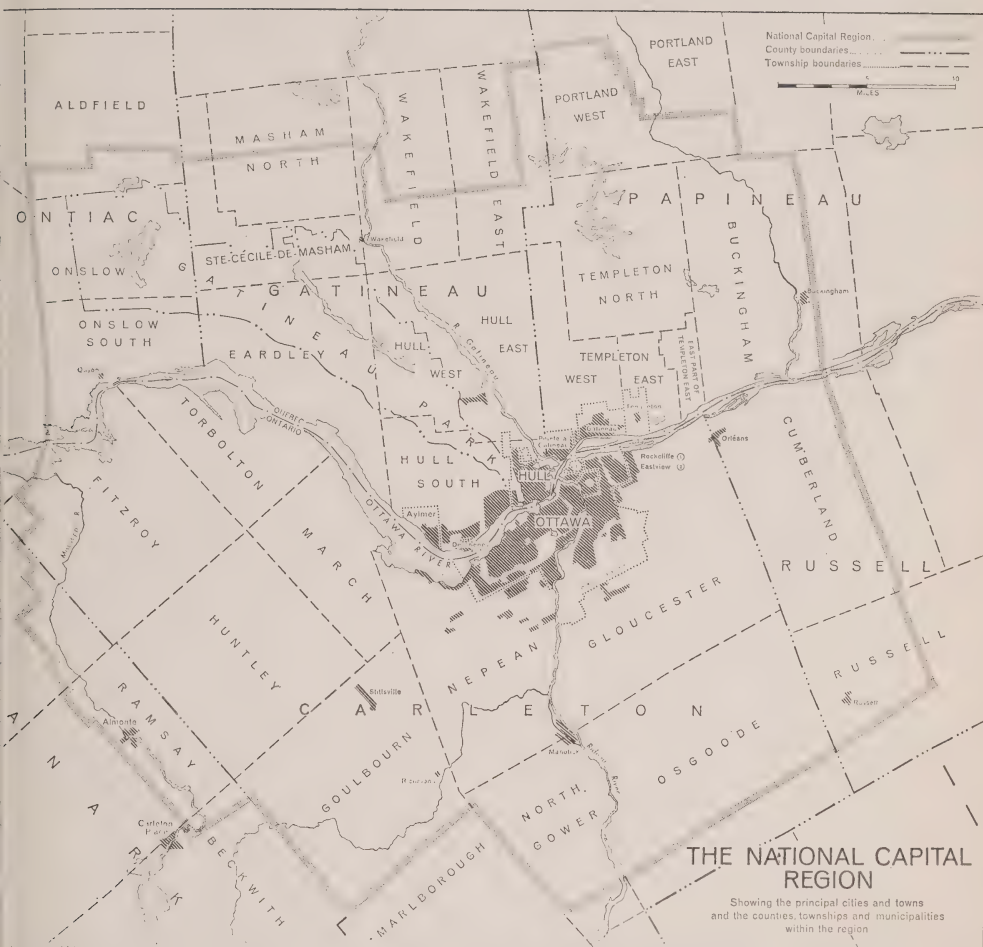
The fact of Ottawa, the city, a community, almost half a century older than Confederation and fully a century older than the "National Capital Plan", cannot be set aside. The zones of its business and commerce, its residential areas — luxury, average, mediocre and sub-standard — cannot be ruthlessly dealt with on the lines of a blueprint or an overall plan or sudden sweeping zoning and rezoning.

The reality of living, the rights of ownership, the relationship of the homes, the churches, the schools, the stores and services, the community's recreation resources, both commercial and otherwise, their eating places, in short all of the pattern of their living must be seen through the "overlay" as it were of what the planners may dream, may desire, may work towards, but only in justice and consideration of what is, as well as what may be. It can all be very frustrating, but it is important to distinguish whether it is the slower, surer, safer processes of a self-governing democracy at the level of its people's local government, or a culpable indifference or non-co-operation which explains the gradualness of development and change among the municipalities which are practically all no less anxious than any especially constituted mechanism of the national government, to justify and realize their dignity as part of the national capital area.⁹

The Committee of 1956 devoted a good deal of its report to the problems of divided jurisdiction and conflict of interest, but it did not think, as did the Committee of 1944, that the proposal for a federal territory should be studied. It probably thought that the federal government was already too heavily committed to a program of voluntary co-operation with the provincial and municipal governments concerned. It considered that there was still a reasonable hope of achieving the objectives of the Plan through such co-operation, especially if the federal government were prepared to spend enough money in a program of assistance to the local municipalities and of control over the use of land through purchase or expropriation.

The pertinent paragraphs from the final report regarding the problems of divided jurisdiction are as follows:

The proposed National Capital area includes portions of the Provinces of Ontario and Quebec. It is superimposed upon certain municipal organization within each Province. As the Plan is brought to fruition works must be undertaken which affect the sphere of provincial or municipal responsibility. But because they are conceived as part of a scheme for the creation of a national rather than provincial or municipal development, these works may be more elaborate than would be required for provincial or municipal purposes. Again, since they are to be installed within populous municipalities, they have a bearing upon the works required by these municipalities for their own development. Sometimes, as in the case of driveways and parkways, they add improvements which the municipality would not install, or



if they were installed, would be installed upon a more modest scale. At other times the creation of the work of the National Capital imposes upon the municipality concerned the burden of additional services or the building of works of greater magnitude than the municipality alone might undertake. For the resolution of these conflicts, co-operation between the three levels of jurisdiction is essential. Hitherto, the emphasis is upon co-operation between the Federal District Commission and the municipalities concerned. A greater measure of integration of planning with the provincial authorities should emerge . . .

It seems not too much to say that Ontario municipalities have an onus cast upon them to avail themselves of the provisions of the *Ontario Planning Act*, and to establish long-range and far-reaching plans for their future development thereunder. Even if Ottawa were not a Federal Capital it might still be expected that the municipal corporations in the area should invoke the provisions of the Act.

But for the Ottawa area more is available, namely the National Capital Plan. It is not imposed on the area by any Statute which superimposes upon the City and its environs an additional plan for beautification over and above any municipal plan. As we see it, this National Capital Plan should be developed as far as possible without assuming obligations proper to the province or the municipalities concerned. Sometimes it is difficult to draw the line . . .

We think that the realization of the National Capital Plan must imply the co-operation of federal, provincial and municipal authorities. In many respects such co-operation is not wanting; in others there is much to be desired. We believe that a series of local demands by individual municipalities or groups of municipalities is no substitute for the reasoned provisions of the National Capital Plan.

The Committee is of the opinion that the over-all plan of the national capital should be submitted to both the Ontario Minister of Planning and Development and the Quebec Minister of Municipal Affairs. This, if agreement is possible, should be regarded as the background against which all individual cases should be dealt with as they arise. At the same time, we think that an appropriate representative of the Government of Canada should consult with the above provincial authorities in view of determining ways and means of implementing the Plan, and we feel that this could be achieved in such a way that it would be fair to all concerned.¹⁰

Regarding the problem of preserving the Greenbelt, the Committee stated:

Evidence given to the Committee warrants our hope that some workable arrangement could be made with the municipalities concerned. The Federal District Commission is willing to try to work out a compromise. We urge that an attempt be made to solve the differences. However, should these negotiations fail, resort might be had to the Minister of Planning and Development for Ontario. It might be possible to invoke the provisions of the *Planning Act* of Ontario, either as drawn or under suitable amendments, to provide for the special circumstances arising in the National Capital area and arising particularly out of the recommendations contained in the National Capital Plan of 1950. We would suggest that this avenue be explored before an expropriation program proceeds.¹¹

This plea for co-operation from the provincial and municipal governments was apparently unsuccessful, and if any further time had been lost in trying to secure co-operation the battle to preserve the Greenbelt would have been lost. In 1958, therefore, the federal government decided to proceed with a program for the Federal District Commission to purchase or appropriate all the land necessary to preserve the Greenbelt. It also implemented two other recommendations of the 1956 report. A new *National Capital Act* was passed changing the name of the Federal District Commission to National Capital Commission, and the Na-

tional Capital District was officially renamed the National Capital Region and doubled in size (from 900 square miles to 1,800 square miles, most of the increase being on the Ottawa side of the river; see map). The Region now took in all or part of 66 municipalities in Quebec and Ontario. This of course further complicated the problem of divided jurisdiction.

At the same time, the new Act removed the mayors of Ottawa and Hull from the Commission. Instead it specified that, of the twenty commissioners, the Governor-in-Council must appoint one from each of the provinces and a minimum of two local residents from Ottawa, one from Hull, and two others—from the other municipalities on each side of the Ottawa river. Since 1958, local representation on the Commission has customarily consisted of four residents of Ottawa, two others from the Ottawa side of the river, one from Hull and one from the Hull side of the river. Also, the National Capital Committee was discontinued and the Commission was given the direct power "to prepare plans for and assist in the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance."

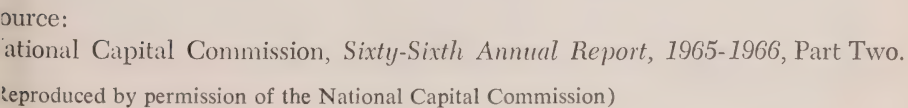
The financial resources of the Commission were greatly enlarged. From now on the federal government would attempt to solve with money the problem of divided jurisdiction—through massive purchase and expropriation of property, by paying the full cost of many projects vital to the success of the Plan, by sharing a large proportion of the cost of many others, and by providing free technical help and advice on planning and other matters to the municipalities in the Region.

IV. Recent Progress and Future Difficulties

Since the federal government's decision in 1958 to provide a massive increase in its financial support for the National Capital Plan, great progress has been made in fulfilling the main provisions of the Plan. The annual report of the National Capital Commission for 1965-66 shows that between April 1, 1947, and March 31, 1966, it spent a total of \$156 million for development and improvement within the National Capital Region (see chart). Of this total it spent \$87.8 million on property acquisitions, including \$34.4 million for the Greenbelt, \$16.7 million for LeBreton Flats, \$5.5 million for Gatineau Park, \$4.9 million for Sussex Drive, \$4.3 million for the Queensway, and \$4.3 million for the Ottawa River Parkway. On other projects of its own it spent \$19.8 million, of which \$7.1 million was for Gatineau Park, \$4.6 million for the Ottawa River Parkway, and \$4.9 million for other parks and parkway projects. It also spent \$20.2 million on the relocation of the railway facilities and \$1.4 million on the construction of the Mackenzie King bridge.

On projects requiring the sharing of expenditures with Ottawa or other

EXPENDITURES FOR DEVELOPMENT AND IMPROVEMENT
WITHIN THE NATIONAL CAPITAL REGION
APRIL 1, 1947 TO MARCH 31, 1966



local municipalities and in some cases also with the provincial governments, the Commission spent \$13.4 million or about 9% of its total expenditures. This amount included grants of \$2.8 million to Ottawa for the construction of sewers and water mains in advance of need, \$5 million to Ottawa for the construction of a sewer to the new sewage disposal plant at Green Creek, \$1.2 million for the reconstruction of Riverside Drive, \$1 million for the construction of the Bytown bridges and improvements to Sussex Drive, \$1.7 million for construction and approaches of other bridges, \$160,000 to Nepean Township for a new sewer and sewage disposal plant, and \$312,000 for research, studies and other types of assistance.

There is little doubt that contributions to local governments for research and other technical assistance was money well spent, for it has stimulated the local municipalities and the two provinces to take some of the action necessary to carry out their share of the Plan. The staff of the Commission, which now numbers about 750, including professional engineers, architects and planners, have also been generous in their provision of technical assistance and advice. Thus, the Commission has tried to follow the recommendation of the Committee of 1956 that the municipalities and the provinces should be brought more closely into the arrangements for completing the Plan.

Examples illustrative of the Commission's assistance, advice and co-operation are given in its annual report for 1964-65. On the Ottawa side of the river, it was represented on the Ottawa Planning Area Board and on the City and County technical advisory committees of the Board. In Ottawa it was represented on the Building Appearance Committee and the Joint Staff Committee for the Urban Renewal Study. Statistical data were provided to Eastview for official studies, and representatives of the Commission attended preliminary discussions for the preparation of an urban renewal study for Eastview. In Gloucester, representatives of the Commission, acting as advisers to the Township Planning Board, assisted in the preparation of a proposed Official Plan for the northwestern part of the Township that lies within the Greenbelt. Representatives of the Commission discussed with the Council and Planning Board of Cumberland Township the need for a planning program, and assistance was given in the preparation of a proposed Official Plan for part of the Township near Orleans, which is likely to undergo urban development. For the Township of March, the Commission agreed to prepare a plan of land use as a guide for the revision of the existing zoning by-law. Officials of the Commission had discussions with the Planning Board of the Village of Stittsville on the need for an Official Plan for the community, and the Commission agreed to assist in its preparation. On the north side of the river, the Commission was represented on the General Planning Committee for the City of Hull and its Environs, and on its sub-committees. The Commission was also represented on the planning committee engaged in the preparation of a Master Plan for the Towns of Gatineau and Pointe Gatineau and their adjacent six municipalities. The

Commission prepared a brief outlining the projected growth in that area and also made a financial grant to assist in the work.

The Commission has tried also to bring the local municipalities and the provinces more directly into the planning process for revising the National Capital Plan. A notable achievement in this respect was the Ottawa-Hull Area Transportation Study of 1965. Although it was prepared by two private joint-venture firms for the City of Ottawa, these firms were assisted by a technical co-ordinating committee chaired by the City's Director of Planning and Works, but with representation from — besides Ottawa and its transit commission and parking authority — Hull, Eastview, Ontario, Quebec, the National Capital Commission, the Ottawa Suburban Roads Commission, the County of Carleton, and the Canadian National and Canadian Pacific Railways. The Study made proposals for a major thoroughfare pattern for Ottawa-Hull and the rest of the National Capital Region over the next twenty years. It is significant that all of the municipalities affected by the proposals have adopted them in principle.

There is no doubt that the federal government has managed to overcome many of the difficulties of divided jurisdiction through its program of massive land acquisition and co-operation with and assistance to the provincial and local governments. By 1966, the major projects contained in the Greber Plan of 1950 had been successfully completed or were well on the way to completion. The Greenbelt had been saved, the Queensway had been built, the railways were being relocated, opening the way for many improvements in the downtown area of Ottawa, the parkway system and the development of Gatineau Park were almost complete, and many of the key bridges had been built.

This has not been accomplished, however, without considerable dissatisfaction and complaint on all sides — from the local municipalities, from groups of local citizens, and from the federal government. The removal in 1958 of the representatives named by the Cities of Ottawa and Hull to the Federal District Commission meant that the local municipalities in the area had no direct representation on the National Capital Commission. Formerly they had also had representation on the National Capital Planning Committee, but under the new arrangement they are not represented at the federal level for purposes of either implementing or revising the National Capital Plan. Not surprisingly, there were some rather bitter comments from the local municipalities regarding this change, especially since the National Capital Commission was still represented on the Ottawa Area Planning Board. Similarly, the expropriation program led to a good deal of opposition, especially in the Greenbelt. The *Expropriation Act* had not been revised, as recommended by the 1956 Committee, to ensure that procedures were scrupulously fair, and complaints were made that the National Capital Commission was acting arbitrarily and without regard to the rights of local citizens. In fact, one of the land owners in the Greenbelt even brought an important test case before the Exchequer Court questioning the constitutional right

of the federal government to expropriate land for the purpose of preserving a Greenbelt, on the ground that this interfered with provincial powers over property, civil rights and, in particular, zoning. This case was appealed to the Supreme Court of Canada, and was recently decided in favour of the federal government because expropriation for the purpose of implementing the National Capital Plan comes under its general power to make laws for the "peace, order and good government of Canada."¹²

On the other hand, the federal government is now pouring millions of dollars into the centre of the Region in the form of development projects, joint sharing of development, and grants in lieu of taxation to the Cities of Ottawa and Hull; yet it has no direct control over or representation on any of the local councils which would give it a chance to help to determine how this money will be spent. As already noted, the National Capital Commission had spent \$156 million in the Region by April of 1966. Also, by 1964 the municipalities in the Region were receiving about \$6.6 million annually from federal grants in lieu of taxation. The largest recipients were Ottawa (\$5.7 million), Hull and its school commission (\$500,000), Gloucester (\$90,000) and Nepean (\$80,000).¹³ Ottawa got by far the largest grant in Canada, the next largest being Halifax (\$1.7 million), Toronto (\$1.6 million), North York (\$1.6 million) and Montreal (\$1.4 million). In 1966 Ottawa will receive for its current budget \$8.4 million in federal grants, about 23% of its own City budget (but only about 9% of the City's current gross expenditure requirements, including schools, compared with 19% from provincial grants, 42% from taxes, and 30% from other sources). In addition, between 1966 and 1970 the City expects to receive \$15 million in federal grants toward its capital budget.¹⁴ Impressed by these contributions to the City, Hon. George McIlraith, President of the Privy Council and M.P. for an Ottawa constituency, proposed in 1964 that the federal government should be represented on Ottawa's City Council. Paul Tardif, M.P. for Russell and for many years a member of Ottawa's Council, endorsed this suggestion. The reaction of the Council was to reject the idea vigorously and to demand City representation on the National Capital Commission instead.¹⁵

That the difficulties of divided jurisdiction have by no means been overcome may be illustrated by three examples. The parliamentary Committee of 1944 had stressed that the pollution of the Ottawa river was already serious, and the Committee of 1956 had placed this as the number one priority on its list of problems to be solved. Yet in 1966, over twenty years later, some ten million gallons of raw sanitary sewage are dumped into the Ottawa river in the capital area every day.¹⁶ The municipalities on the Quebec side are the worst offenders, since most of them have no sewage treatment whatsoever. In addition, tons of industrial wastes are discharged into the river daily from the pulp and paper mills of the E. B. Eddy Company and the Canadian International Paper Company. Since Hull has had to give priority to a water filtration plant, it has

no immediate plans for sewage treatment. Yet it dumps six million or more gallons of raw sewage daily. But even on the Ontario side the first sewage disposal plant was not installed until 1962. With help from the National Capital Commission, Nepean installed a treatment plant in 1962, and Ottawa did likewise in 1963. However, the Nepean plant is now overloaded and periodically discharges an overflow of raw sewage into the river, and the City's plant does not remove all of the pollutants from the sewage. About 35% of solid matter and 65% of biochemical pollutants remain in the estimated 36 million gallons of sewage treated daily.

The second example is a minor but typical one arising out of the relocation of Ottawa's Union Station to the east side of the city, beyond Hurdman's Bridge. When the new station opened in August, 1966, no provision had been made for bus service. The Ottawa Transportation Commission and Mayor Reid took the view that, since the new bus service would mean a heavy loss for the O. T. C. and since the station had been moved at the insistence of the National Capital Commission, "that makes it their responsibility to make sure there is public transportation to the new site."¹⁷ In this case, divided jurisdiction had left visitors and residents with no bus service closer than the three blocks to the Union Station, and this distance was across a rough construction site.

The third example, a more serious one, is the fulfilment of a freeway and street plan proposed in the Ottawa-Hull Area Transportation Study. This plan, which included the technical co-operation of all three governments, was prepared by private firms under a contract with the City of Ottawa. It was not produced by the National Capital Commission as part of the National Capital Plan. Yet it is revolutionary in its proposals for the construction of a new freeway system and the reconstruction of a good deal of downtown Ottawa, calling for fundamental revisions of municipal Master Plans and of the National Capital Plan. The fragmentation of municipal responsibility in the area is such that, although the main municipalities concerned approved the plan in broad principle, what assurance is there that they will adhere to the plan? "In terms of transportation needs," as the Study notes, "the Study Area (which included 13 municipalities in Ontario and 15 in Quebec) function as an entity. . . . Should one body wish to alter the detail of the plan in any way, all the other participants must be given the opportunity of assessing the consequences, both in terms of their own responsibilities and in terms of effectuating the total plan for the benefit of the entire Study Area."¹⁸ Moreover, the cost will be tremendous, requiring \$435 million over the next twenty years. Of this, \$103 million will be needed in Quebec and \$332 million in Ontario, with expenditures in Ottawa alone accounting for \$226 million, or over half the total. The second question, then, is: who is going to pay for this redevelopment? Since the federal government did not produce the plan, the temptation for it to disclaim financial responsibility will be great.

Despite the impressiveness of the national capital projects completed

to date, and despite considerable private rebuilding of Ottawa's business core in recent years, parts of the centres of Ottawa and Hull still remain a disgrace to the nation. "To apply cosmetics to the decayed body of a disorganized city," as Wilfred Eggleston notes (p. 280), "will not achieve the purpose for which the (National Capital) Commission exists." Nor has the existing planning machinery prevented a great deal of uncontrolled and undesirable urban sprawl, which still continues beyond the boundaries of Ottawa and Hull. Unfortunately, the plain facts are that, constitutionally, the National Capital Commission cannot control development or redevelopment on land that it does not own; that the planning, land use and zoning controls by the local municipalities in the area are in many ways still unsatisfactory; and that the Provinces of Ontario and Quebec and the Cities of Ottawa and Hull are not prepared to pour the amount of money into urban and road redevelopment that would be necessary to create a capital worthy of Canada's growing stature as a nation.

It is now more than fifteen years since the National Capital Plan was published; yet only bits and pieces of it are fully in effect in the form of legally enforceable official Plans. It is true that Ottawa now has a comprehensive zoning by-law, approved in 1965, and that the Ottawa Planning Area Board now has a Master Plan for procedures, roads, parks and land use, approved in 1963. But the parks and land use sections apply only within the boundaries of Ottawa. The other municipalities in the Region either have no plan, bits and pieces of a plan, or a general plan which may or may not be officially approved by or conform with the National Capital Plan.

The accompanying chart, prepared by the Ontario Department of Municipal Affairs, reveals that at the end of 1964—fourteen years after the approval of the National Capital Plan—of the twenty-one Ontario municipalities in the National Capital Region, Ottawa was the only one that had a Master Plan officially approved by the Ontario Government. Although Ottawa also had a complete zoning by-law, it had only partial subdivision control. The four others in the Ottawa urban area (Rockcliffe, Eastview, Gloucester and Nepean) had complete zoning by-laws but only partial Official Plans, and only Gloucester and Nepean had complete subdivision control. The other three townships that come under the Ottawa Planning Area Board (Fitzroy, March and Torbolton) had neither Official Plans nor complete zoning by-laws. Of the thirteen municipalities not under the Ottawa Planning Area Board, none had Official Plans and only the Village of Richmond and Stittsville had complete zoning by-laws.

The situation is much the same on the Quebec side of the river. With help from Central Mortgage and Housing Corporation, Hull had a general plan for urban renewal prepared in 1962. And with help from the federal and provincial governments, Hull plus the four other municipalities west of the Gatineau river co-operated to have a Master Plan produced in 1964. But under Quebec law no provision exists for provin-

A SUMMARY OF PLANNING STATISTICS FOR THE NATIONAL CAPITAL REGION

(including 21 Municipalities in the Counties of Carleton and
Prescott-Russell)

Municipality	Planning Area		Zoning By-law		Committee of Adjust- ment	Subdivision Control	
	Planning Board	Official Plan	Com- plete	Partial		Com- plete	Partial
Town of Rockland	—	—	—	—	—	X	
Village of Casselman	—	—	—	—	—	—	—
Twp. of Cumberland	S.I.	—		X	—	X	
Twp. of Clarence	—	—	—	—	—	—	—
Twp. of Cambridge	—	—	—	—	—	—	—
Twp. of Russell	—	—	—	—	—	—	—
Village of Richmond	—	—	X		—	—	—
Village of Rockcliffe Park	J.	partial	X		—		X
Village of Stittsville	S.I.	—	X		X	X	
Twp. of Fitzroy	J.	—		X	—	—	—
Twp. of Gloucester	(J)Sub.	partial	X		X	X	
Twp. of Goulburn	—	—		X	—	X	
Twp. of N. Gower	S.I.	—		X	—	X	
Twp. of Huntley	—	—	—	—	—	—	—
Twp. of March	J.	—		X	—	X	
Twp. of Marlborough	—	—		X	—	—	—
Twp. of Nepean	J.	partial	X		—	X	
Twp. of Osgoode	S.I.	—		X	—	X	
Twp. of Torbolton	J.	—		X	—	X	
City of Ottawa	J.	X	X		—		X
City of Eastview	(J)Sub.	partial	X		X	—	—

J. —Joint Ottawa Planning Area Board
S.I. —Single, independent Planning Board
Sub. —Subsidiary Planning Board

Source: *What's New in Planning* (Bulletin of the National Capital Region Branch,
Community Planning Association of Canada), No. 7 (May, 1965), p. 19.

cial approval of a town, city or regional plan, so these plans have no official status. The Master Plan has not even been approved by the co-operating municipalities. It is regarded as nothing more than a guide. None of these municipalities has adequate zoning by-laws. A Master Plan study is now being prepared, with help from the federal and provincial governments, for the eight municipalities east of the Gatineau river, but when it is completed it similarly will have no official status.

The successful completion of the major projects contained in the 1950 Plan means that planning in the area is now entering a new phase of redeveloping the urban cores of Ottawa and Hull — a process which will touch the lives of businesses and citizens of Ottawa and Hull much more closely and is likely to lead to renewed friction. Moreover, the unexpectedly rapid expansion of population in the metropolitan area since the war has made the Plan of 1950 in many ways out of date. Since this rapid expansion is likely to continue indefinitely into the future, the Plan must be continuously revised. This raises the difficulty — in addition to the old problem of how to carry out the Plan — of how to revise it so that it will be acceptable to the local authorities and citizens. They have no direct representation on the National Capital Commission, the federal body now charged with revising the Plan.

Recent urban growth in the area has been so great that it will require a change of Greber's original concept of an urban centre surrounded by a Greenbelt with only small satellite towns beyond it. The Greber Plan had projected that the urban population of the national capital area would reach 500,000 by 1980, but this population figure was reached in 1963. The growth has been so marked that between 1956 and 1961 Ottawa-Hull was the fastest growing metropolitan area in eastern Canada and third in Canada, exceeding even Toronto (see chart). The most recent prediction is that the National Capital Region will have a population of over 800,000 by 1980, and possibly a million by the year 2000. It will soon contain as big a population as any of the Atlantic provinces.

Studies of the future urban growth pattern made by the technical co-ordinating committee for the Ottawa-Hull Area Transportation Study indicate that this growth will take place in three specific areas to the west, south and east of the Greenbelt on the south side of Ottawa, and in two large areas north of Ottawa on the west and east sides of the Gatineau river. By the year 2000 Ottawa's population may reach 540,000 and the present Aylmer-Hull urban area will be about 160,000. The populations of the four new satellite cities will also be large. Indeed, the one to the west of the Greenbelt may be larger than Aylmer-Hull, with an estimated 180,000, while the ones east of Hull and south of the Greenbelt are likely to have about 120,000 each. The percentage distribution of the population is likely to be about as follows: 38% within the Greenbelt, 40% beyond the Greenbelt on the Ontario side of the river, and 22% on the Quebec side.¹⁹ Since the residents of the whole metropolitan area will depend for their employment mainly upon the federal government, a large proportion of them will travel to work in the urban

core on high-speed traffic arteries. This situation will be considerably different from Greber's vision of small self-contained satellite towns far beyond the Greenbelt.

The projected speed and pattern of this urban development will soon require, for its effective control, a reorganization of local governments in the Region more fundamental than that which took place in 1950 through Ottawa's multiplication of its area by five times in an attempt to control urban development within the proposed Greenbelt. The present existence of the Greenbelt, and the expectation that the new urban areas in the south will be established along widely separated traffic arteries and that urban Hull will grow rapidly and split into two big urban areas separated by the Gatineau river, means that simple annexation and integration of governmental services will no longer be the answer. It is clear, as it was before 1950, that a comprehensive plan for a metropolitan area requires a governmental authority over the area which has control over all the services of local government that have relevance to planning and development. Except for Ottawa, the existing local governments cannot provide the finances, the experts or the control necessary to make them viable units of a national capital plan or even of a desirable metropolitan plan.

For this reason, the idea of a basic reorganization of the local governments on the Ontario side of the Ottawa river has been gaining ground. The local municipalities no doubt have been influenced in this respect by the successful creation of second-tier metropolitan authorities in Toronto and Winnipeg, which govern the whole metropolitan area for certain purposes but have not destroyed the existing municipalities in the area. In 1964, the Government of Ontario, which has been initiating studies of urban regions upon local request, appointed Murray Jones to study the problems of local government in the Ottawa region over an area somewhat smaller than the Ontario side of the National Capital Region (sixteen versus twenty-one municipalities). One wonders why the boundaries of the study area and Region could not have been made to correspond. Mr. Jones had formerly been Director of Planning for the Toronto metropolitan authority and was now a consultant on municipal problems. Most of the municipalities in the study area and a number of individuals presented briefs at his hearings, and most of them agreed that a reorganization of local government was necessary. Many thought that some new form of metropolitan government was the answer, but there was not much agreement on what shape this new structure of government should take.

One of the main findings of the Jones Commission Report, published in 1965, was that the municipalities in the study area show a great variation in their standard of services and in their ability to raise revenue for these services. In order to provide a more uniform standard of services and revenues and to control future urban development, he therefore recommended the abolition of all existing municipalities, boards, and commissions, except school and hospital boards, and the creation instead of a

centralized regional council which would control beneath it a system of urban and rural nine-member district councils to administer purely local affairs. The urban districts would each have about 30,000 population. There would also be several development districts on the urban fringe which would later become urban districts. The boundaries of the districts would not correspond with existing municipalities. Although the Jones proposal may have been ideally desirable from the point of view of efficient administration, it would have been too great a break with the past, meaning as it did the abolition of the existing local authorities. Their reaction was one of almost universal opposition. Eastview feared that its French-speaking majority would be swallowed by the plan. And since the proposal would have required carving up Ottawa into districts, Ottawa's Council also rejected the scheme. Instead it supported a counter-proposal which it had presented to the Commission: that the City should annex Rockcliffe Park, Eastview and the parts of Nepean and Gloucester that lay within the inner boundary of the Greenbelt, and that Carleton County should be strengthened, perhaps by being incorporated as a city. Ottawa and the County would have over them either a general planning body or a weak metropolitan authority which might control a few metropolitan-wide services.

Constitutionally, the reorganization of local government in the Ottawa metropolitan area requires action by the Government of Ontario. Since it is unlikely to take action without the agreement either of the City of Ottawa or of most of the other municipalities in the area, the Jones proposal is not likely to be adopted. Since no other proposal has been made which appears to be both viable and acceptable, a reorganization is not likely to take place for some years.

A basic flaw in the Jones investigation, because of the constitutional and political limitation upon its terms of reference, was its failure to include the Hull metropolitan area. Even if reorganization should occur on the Ottawa side, the problems of a unified governing authority for the Hull side and for the whole Ottawa-Hull area still would not be solved. On the Hull side, the same need for reorganization exists. The present and potential Hull urban area is split up among four municipalities west of the Gatineau river (Hull, Lucerne, Deschênes and Aylmer), and at least four east of it (Gatineau Point, Templeton-West, Gatineau and Templeton). Among these municipalities the usual problems of lack of co-operation arise. Lucerne, for example, fears that part of it will be swallowed by Hull, or that Hull will gobble up the whole potentially urban area west of the river. To avoid too intimate association with Hull, Lucerne recently had its name changed from Hull South to its present name, and has made overtures to Aylmer and Deschênes for an amalgamation with them as a sort of counter-balance against Hull.²⁰ But no move has been made yet by either the local governments in the Hull area or the Quebec Government to create any sort of metropolitan authority.

The conclusion seems to be inescapable that a fundamental reorgan-

ization of the municipalities on both sides of the river that are slated for future development will soon be desirable. Yet this is not likely to be achieved effectively by the independent action of two different provincial governments and two different sets of municipalities on each side of the river. It could be achieved by the federal government if it had undisputed jurisdiction over the National Capital Region. The federal government could achieve this without even abolishing the existing municipalities, by creating a superior governing authority for the whole Region. From the point of view of effectively developing and governing the national capital of the future, therefore, the time appears to be more opportune than in any period since Confederation to reconsider the proposal for a federal territory.

V. The Bilingual-Bicultural Issue

Until recent years the National Capital was thought of mainly in terms of physical development—as an efficient place for members of Parliament and civil servants to work and live, and as an impressive place worthy of a capital city for Canadians and foreigners, such as heads of national organizations, journalists, and representatives of foreign governments, to visit, to conduct their business and to reside. Not much attention was paid to the development of the National Capital as a symbol of the successful uniting of Canada's two main ethnic groups into a single nation. Ottawa remained predominantly an Anglo-Saxon city in an English-speaking province.

From this point of view, Montreal might have been a better choice as the federal capital. It is interesting to recall that for a short period before Confederation, from 1844 to 1849, Montreal was the capital of United Canada. Though Montreal was in Canada East, it had a slight English-speaking majority at this time. The later growth of the federal civil service would have maintained a much larger English-speaking minority. This, combined with the predominance of the English-speaking majority in Parliament, might have turned Montreal into a genuinely bilingual-bicultural capital. Its much greater size would have made it a more cosmopolitan centre for the mingling of the two cultures. Moreover, the existence of the National Capital within the territory of Quebec would have made it much more difficult for the "separatists" to think of Quebec's withdrawal from the federation.

It is difficult, however, to predict the extent to which the capital's location in Montreal would have cemented English-French relations. Would it instead have exacerbated them? Since complaints have been made that Montreal is even now dominated in its business world by the English-speaking minority, would not the presence of Parliament and the growth of the federal civil service there merely have increased the power and predominance of this minority? Also, one thinks of the close and delicate relations that would have been created between the federal government and the governments of Quebec and Montreal by the exist-

ence of the federal Parliament and other buildings within the boundaries of Montreal. Yet the prospects of turning Montreal Island into a federal territory would have been slim, and in any case the urban population would have overflowed the boundaries of the territory as it has done in the District of Columbia.

At any rate, because of the riot in Montreal aroused by the *Rebellion Losses Bill*, the burning of the Parliament Buildings and the physical attack on Lord Elgin in the streets, the capital was moved from Montreal in 1849. From then until the choice of Ottawa in 1857, the capital oscillated dizzily every four years between Toronto and Quebec, but Montreal was never considered seriously again. During this period, because of the intense rivalry between Upper and Lower Canada over the location of the capital, Ottawa was chosen as the least of evils. "Ottawa is in fact, neither in Upper nor Lower Canada," Sir Edmund Head noted in a confidential memorandum to the Queen in 1857. "Literally it is in the former; but a bridge alone divides it from the latter. Consequently its selection would fulfill the letter of any pledge given or supposed to be given, to Upper Canada at the time of the union."²¹

Although the rivalry between Upper and Lower Canada had been so intense that they were willing to put up with the inconveniences of shifting the capital back and forth, and although this rivalry continued even after the Queen's choice of Ottawa in 1857, no one before or at the time of Confederation seems to have thought of or proposed the creation of a capital which would be located in *both* Upper and Lower Canada. Yet this could have been done before Confederation (since Upper and Lower Canada were then united) by turning Ottawa and Hull into a single city, or after Confederation by carving out the area around Ottawa and Hull as a federal territory. Ottawa already had a French-speaking minority and the addition of Hull would have added strength to this minority. Also it would have partly satisfied Lower Canada's desire to have the capital located in French-speaking territory. Downtown Hull is close to Parliament Hill; the existence of the Union bridge and the early construction of another bridge would have made quite possible the extension of federal buildings to that side of the river.

As it turned out, however, the relevance of Hull to the national capital was ignored for sixty years after Confederation. Since Hull had been cut off more definitely from Ottawa by Confederation and was from then on governed by a different legislature in a new province, this is perhaps not surprising. In any case, it was not officially included in the federal government's concept of the National Capital until the creation of the Federal District Commission in 1927, when Hull was specifically named as part of the capital district to be improved. Even then, little was done to recognize Hull as part of the National Capital. It is true that the Champlain bridge was completed, the federal driveway was extended to the Quebec side, and a beginning was made at acquiring the land north of Hull necessary to form Gatineau Park, which is now an important recreation area for Ottawa. But it was not until after the Second World

War that the first important federal building, the Printing Bureau, was constructed in Hull.

Even the Master Plan of 1950 did not envision Hull as an integral part of the National Capital. Although proposals were made for beautifying Hull, no large-scale migration of administrative buildings or national cultural or research centres, such as the National Library, Museum, Gallery, Performing Arts Centre, Research Council, or Central Experimental Farm, was projected. Among other things, such a migration would have reduced Hull's dependence for employment upon the E. B. Eddy Company and would probably have made possible the removal of its manufacturing plant, which mars the north shore directly across from Parliament Hill, flaunts a large neon sign advertising its toilet tissues, and periodically blankets downtown Ottawa in sulphurous fumes.

In the process of fulfilling the Master Plan the federal government tended to under-emphasize Hull. Although the municipality was obviously too poor to pay for its share of the Plan, and lost considerable tax revenue through the expropriation of land for federal parkways, parks and other purposes, it received no special grants as Ottawa did before 1949, and the parliamentary Committee of 1944 had made no recommendation for such grants. True, Hull began to receive small grants in lieu of taxation under the general Act of 1949, but the Act does not include tax grants for federal park or parkway land. It was not until the federal government began its massive financial support of the Plan in 1958 that Hull began to receive substantial aid in the form of joint sharing of the cost of projects such as the new interprovincial bridge. And it was not until after 1962 that much was done about assisting Hull and its surrounding municipalities to draw up detailed plans for the future development of the Hull side of the river. Although the National Capital Plan had included a proposal for a Greenbelt surrounding Hull, this idea was abandoned, and the decision in 1958 to purchase land to preserve the Greenbelt did not include the Hull side. Today only one federal capital building, the Printing Bureau, stands as evidence that Hull is considered a functional part of the federal capital. Hull residents feel strongly about this neglect, and fear that the Government's increasing practice of contracting out its printing will reduce the Printing Bureau to little more than a warehouse for government documents.

Why was Hull's claim that it should be regarded as part of the national capital ignored for so long and then so grudgingly admitted? From an employment point of view it had always been closely tied to the national capital. At the hearings of the parliamentary Committee in 1956, the Mayor of Hull pointed out that by then between 5,000 and 6,000 residents of Hull were working in the federal civil service, and that half of the population depended upon the presence of the federal government for their employment. "If the Ottawa river had not stood there as an effective barrier," suggests Eggleston (p. 211), "had the bridge connections between the cities of Ottawa and Hull been more numerous and satisfactory, had the political relations between Quebec City and federal Ottawa

been at times more cordial . . . I suspect that governmental Ottawa would have overflowed Parliament Hill to the north (as well as to the south-west and east)." His first reason may have been true of the first sixty years, but it has not been sufficient since. It is more likely that his second reason has been the predominant one, especially in this century. One can argue that if the federal government had been more forthright in its recognition of the Hull side of the river as part of the national capital by placing federal buildings there, and more generous in its financial support and in the representation of the Hull side on successive federal capital commissions, co-operation from the Hull-side municipalities and from the Government of Quebec would have been much better.

From Quebec's point of view, the difficulty has always been that the National Capital is in a sense an alien capital in alien territory. The culture and language of Ottawa are predominantly Anglo-Saxon and English-speaking, and it is governed under a different system of judicial and provincial law. French-speaking Canadians who come to live in Ottawa as members of Parliament or as federal civil servants find that they are cut off from their cultural roots and are forced to speak, read and write English most of the time. They dislike living in Hull because it is only a run-down lumber town and a poor cultural home for educated French Canadians. On the other hand, if they live in Ottawa, they become part of an alien minority who lack equal linguistic and educational rights under Ontario law. And in the city government there has always been a strong majority of English-speaking Canadians. As a result, they tend to congregate in a separate French-speaking section of the city known as Lower Town, or migrate to Eastview.

These circumstances no doubt explain Eastview's continuing existence as a separate municipality even though it is now an island within the boundaries of Ottawa. The annexations of 1950 tended to overwhelm the French-speaking minority in Ottawa, and Eastview became a kind of French-speaking bastion through its majority control of that municipality's Council and other local institutions. Eastview, for example, is one of the few municipalities in Ontario which conducts its council business in both languages and which has bilingual by-laws, tax bills and traffic signs, and a bilingual public high school where several subjects are taught in French. French is the mother tongue of about half the teachers and over two-thirds of the students.

Ottawa has no bilingual public elementary or secondary schools. In 1965 the Public School Board refused the request of a group of French-speaking parents for a bilingual elementary school on the grounds that the children were too scattered and the classes would be too small. Nor are there any purely French-speaking separate schools in Ottawa or Eastview. Historically, under Ontario's educational system French-speaking children, like the children of immigrants, were expected to learn English as soon as possible. The curriculum required certain subjects, such as science and mathematics, to be taught in English, with progressively more English expected in the upper grades. In recent years a con-

cession to this policy, in areas where the parents are predominantly French-speaking, has been to allow the first three grades to be taught almost entirely in French and several subjects to continue in French even into high school. About half of the separate schools in Ottawa and most in Eastview are bilingual schools of this kind.

Moreover, in the separate school system the standard of facilities and instruction is lower than that of the public schools, and separate school supporters must pay higher taxes. There are several reasons for these discrepancies. First, the number of school children in relation to the number of taxpayers is greater. Also, under Ontario law a corporation may split its school tax and pay the separate school tax in the proportion in which its shareholders are Roman Catholic, but most corporations elect to pay the lower public school tax. Similarly, a Roman Catholic may elect to pay the public school tax, and many do, particularly businessmen who wish to keep down competitive costs. On the other hand, non-Catholics (including non-Catholic fathers in a mixed marriage) must pay the public school tax even if they send their children to separate school. Although provincial grants have increased markedly in recent years, they do not make up for these costs and tax deficiencies. For 1966 the separate school tax rate is still about 12% higher than the public school rate.

Local tax and provincial support for separate schools does not go beyond grade 10. While a few Roman Catholic bilingual high schools exist, they are costly to the parents and provide a much lower standard of instruction than the public high schools. Similarly, the bilingual University of Ottawa was not provided with adequate financial support by the provincial government until it was reorganized as a non-sectarian university in 1965.

As a result of these educational difficulties and of the overwhelming predominance of the English language in business, in the federal and local public services, and in everyday living, French Canadians in Ottawa are threatened with the gradual loss of their language and culture. The 1961 statistics for the Ottawa census metropolitan area (which includes the Hull side) reveal that this loss has already taken place to some extent. I have assembled the relevant figures on the population's ethnic group, mother tongue, official language and religion in Tables I-IIA. These tables show that, of Ottawa's total population of 268,000 in 1961, nearly 70,000, or about one-quarter, gave their ethnic origin as French. On the other hand, only 57,000, about one-fifth, gave their mother tongue as French, indicating some loss of the French language from one generation to the next. The whole metropolitan area on the south side, except for Eastview, shows a similar loss. Hull, on the other hand, actually shows a slight gain, indicating that some children of English-speaking parents have adopted French as their mother tongue. Out of Hull's population of 57,000 in 1961, only 5,500, or under 10%, did not give their mother tongue as French. Because of the existence of some English-speaking communities in the Hull metropolitan area, however,

this area as a whole shows no gain for the French language. Exactly the same proportion, 85%, gave French as their ethnic group and mother tongue.

The figures on official language show a similar predominance of English and French, respectively, on the south and north sides of the river, and also indicate the extent to which the metropolitan area is bilingual. In the Ottawa area south of the river, whereas nearly 70% of the total population stated that of the two official languages they could speak English only, a mere 15,000, or under 5%, stated that they could speak French only. The Hull metropolitan area, and in particular the city of Hull, shows almost the reverse situation. Of Hull's total population of 57,000, a mere 3,200 spoke English only, while over 25,000, or nearly half, spoke French only. In the city of Ottawa, only about one quarter spoke both English and French, while in Hull and in its whole metropolitan area, there were more people who spoke both English and French than who spoke French only, indicating the much greater degree of bilingualism north of the river. In Hull almost exactly half of the population is bilingual. The reason, of course, is the predominant influence of English-speaking Ottawa. Much of the French-speaking population has been required to learn English in order to work in Ottawa, whereas in Ottawa the English have not had to learn French.

The comparative figures on religion show that, as might be expected, the number of people in the Hull metropolitan area who give their

TABLE I
ETHNIC GROUP, MOTHER TONGUE, OFFICIAL LANGUAGE AND
RELIGION OF POPULATION IN CENSUS
METROPOLITAN AREA OF OTTAWA, 1961
(Population in thousands)

	Ottawa	Rest of Ottawa Area	East- view	Total Ottawa Metro.	Hull	Rest of Hull Area	Total Hull Metro.	Total Whole Area
<i>Ethnic Group</i>								
British Isles	148.1	23.0	6.5	177.6	4.5	7.1	11.6	189.2
French	68.5	9.4	15.6	93.5	50.9	31.0	81.9	175.4
Other	51.6	7.8	2.5	61.9	1.5	1.8	3.3	65.2
<i>Mother Tongue</i>								
English	188.1	29.3	8.4	225.8	4.6	8.8	13.4	239.3
French	56.9	8.2	15.0	80.1	51.4	30.5	81.9	162.0
Other	23.2	2.6	1.2	27.0	.9	.6	1.5	28.5
<i>Official Language</i>								
English only	188.8	29.4	7.8	226.0	3.2	7.1	10.3	236.3
French only	9.0	2.3	3.6	14.9	25.5	16.4	41.9	56.8
English and French	67.0	8.3	12.9	88.2	27.9	16.4	44.3	132.5
Neither	3.4	.2	.3	3.9	.3	.0	.3	4.2
<i>Religion</i>								
Rom. Catholic	127.4	16.7	19.4	163.5	54.8	35.3	90.1	253.6
Other	140.8	23.4	5.2	169.4	2.1	4.6	6.7	176.2
TOTAL, 1961	268.2	40.1	24.6	332.9	56.9	39.9	96.8	429.8
TOTAL, 1956	222.1	24.9	19.3	266.3	50.9	28.3	79.2	345.5

Source: Based on 1961 Census of Canada, Series 1.2: Population (Canada, Dominion Bureau of Statistics), Tables 39, 70 and 46, in Bulletins 1.2-5, 1.2-9 1.2-6.

TABLE IA
PERCENTAGE DISTRIBUTION OF POPULATION
BY ETHNIC GROUP, MOTHER TONGUE OFFICIAL LANGUAGE, AND
RELIGION IN CENSUS METROPOLITAN AREA OF OTTAWA, 1961*

	Ottawa	Ottawa Metro.	Hull	Hull Metro.	Whole Area
<i>Ethnic Group</i>					
British Isles	55.2	53.3	7.9	11.9	44.0
French	25.5	28.0	89.4	84.6	40.8
Other	19.2	18.5	2.6	3.4	15.1
Total	100.	100.	100.	100.	100.
<i>Mother Tongue</i>					
English	70.1	67.8	8.0	13.8	55.6
French	21.2	24.0	90.3	84.6	37.6
Other	8.6	8.1	1.5	1.5	6.6
Total	100.	100.	100.	100.	100.
<i>Official Language</i>					
English only	70.3	67.8	5.6	10.6	54.9
French only	3.3	4.4	44.8	43.2	13.2
English and French	24.9	26.4	49.0	45.7	30.8
Neither	1.2	1.1	.5	.3	.9
Total	100.	100.	100.	100.	100.
<i>Religion</i>					
Roman Catholic	47.5	49.1	96.3	93.0	59.0
Other	52.4	50.8	3.6	6.9	40.9
Total	100.	100.	100.	100.	100.

Source: Table I.

*Totals do not add to exactly 100.0, due to rounding of figures.

TABLE II
COMPARISON OF FRENCH AS ETHNIC GROUP, MOTHER TONGUE
AND OFFICIAL LANGUAGE, AND WITH ROMAN CATHOLIC RELIGION
IN OTTAWA, HULL, AND CENSUS METROPOLITAN AREA, 1961
(Population in thousands)

	Ottawa	Ottawa Metro.	Hull	Hull Metro.	Whole Area
Ethnic Group	68.5	95.5	50.9	81.9	175.4
Mother Tongue	56.9	80.1	51.4	81.9	162.0
Official Language					
(French only and Both)	76.0	103.1	53.4	86.2	189.3
Roman Catholic	127.4	163.5	54.8	90.1	253.6
Total Population	268.2	332.9	56.9	96.8	429.8

Source: Table I.

TABLE IIA
PERCENTAGE COMPARISON
OF FRENCH AS MOTHER TONGUE, ETHNIC GROUP AND OFFICIAL
LANGUAGE, AND WITH ROMAN CATHOLIC RELIGION
IN OTTAWA, HULL AND CENSUS METROPOLITAN AREA, 1961

	Ottawa	Ottawa Metro.	Hull	Hull Metro.	Whole Area
Ethnic Group	25.5	28.0	89.4	84.6	40.8
Mother Tongue	21.2	24.0	90.3	84.6	37.6
Official Language					
(French and Both)	28.2	30.8	93.8	88.9	44.0
Roman Catholic	47.5	49.1	96.3	93.0	59.0

Source: Table II.

religion as Roman Catholic is about the same as those who give their ethnic group as French. The Ottawa metropolitan area, however, and Ottawa in particular, indicates a surprisingly larger number of people who are Roman Catholic than are of French origin; in Ottawa in 1961 about 128,000 were Catholic, nearly half the total population. This is because of the presence of a considerable number of Irish Catholics in the area.

In view of the disadvantageous situation of the French minority in Ottawa, it is not surprising that the federal Civil Service Commission has found it difficult to attract French-speaking civil servants to Ottawa and to keep them there. Coming from a French-speaking culture in Quebec, they find living in Ottawa an unpleasant shock. As a result, many of them resign and return to their home province. After the reform government of Jean Lesage came into power in Quebec and began hiring well-qualified provincial civil servants, some of the best French-speaking federal civil servants left for Quebec. In recent years, the federal government has been making valiant efforts to meet one of the chief sources of French-Canadian dissatisfaction: the neglect of the French language in the civil service. A massive program has been launched to teach French to English-speaking civil servants, and the federal service is gradually becoming more bilingual. A new spirit is now developing among English-speaking civil servants. Many of them want their children to become fluently bilingual by taking their schooling in French, and also would like to see the position of the French-speaking minority in Ottawa improved.

The city government in Ottawa, however, has remained relatively untouched by these developments. True, the Council recently decided to introduce bilingual traffic signs in one French-speaking ward, and to print its future tax bills in both languages. But it decided that bilingual letterheads and by-laws would be too costly. And when the Royal Commission on Bilingualism and Biculturalism began looking into the use of the French language by the civic administration and the relative proportions of English and French-speaking civil servants, it received a singular lack of co-operation from the City, which at first objected to any inquiry being conducted and later refused to allow a questionnaire on language practices to be distributed.

In April, 1966, the new Minister of Citizenship, Jean Marchand, in a speech to the Ottawa Board of Trade, criticized the general resistance to the use of French in Ottawa. Commenting on the cold reception this speech received from English-speaking Ottawans, Gérard Pelletier, newspaper columnist and new member of Parliament, gave this graphic description of the French Canadian's reaction to Ottawa:

The capital city of a supposedly and officially bicultural country is about as bilingual as Kitchener, Ontario, or Edmonton, Alberta . . . It seems rather ludicrous to me that in order to represent a French-speaking riding of a French-speaking province in the Parliament of my country, I am forced to live in a unilingual city where I get unilingual summonses when I disobey unilingual traffic signs; where I would have to appear before an English-speaking court if I were to plead not guilty; where there is not

a single public school in which my teen-age son and daughter could pursue their studies in their own language. All day long, one is reminded by a thousand details that the so-called "national capital" of Canada is an English-speaking city.²²

The attitude of French Canadians to the capital city, then, is not hard to understand. They—and also many fair-minded English-speaking Canadians—are beginning to ask questions such as these: is it right that the national capital, which is necessarily the home of many French-speaking M.P.'s and civil servants, should provide an atmosphere which to many of them is hostile? Is it right that they should be deprived of their own cultural environment, especially the use of their own language? Is it fair that they should not have equal educational services and linguistic rights? Isn't Ottawa as the National Capital a special case—shouldn't it be a symbol of the two founding peoples and cultures, and shouldn't it become a model of bilingualism and biculturalism for the rest of Canada?

The real problem, however—as with the physical planning and development of the National Capital—is that the federal government has no control over Ottawa. A number of people have recently come to believe, therefore, that the problem can only be solved by cutting the Ottawa area adrift from the overwhelming English-speaking majority and Anglo-Saxon culture and laws of Ontario, and combining it with the Hull area as a separate territory or province. This, then, explains the origin of the recent proposals to this effect made to the Royal Commission on Bilingualism and Biculturalism and elsewhere.

VI. The Case for a Federal Territory

1. History of Proposals for a Federal District

Because of the basic problem created by the location of the capital of a federal state within a city governed by the laws of a single province, proposals for a federally governed capital district have been made ever since Confederation. The proposals made in the early period were at various times given serious consideration until about 1939.

The first of these early proposals was made almost incidentally by John Hamilton Gray in his *Confederation*, published in 1872. His case for a Federal District was so well stated that it is worth quoting at some length (p. 108):

At the time of the Convention, one mistake occurred: no provision was made for creating a Federal District for the capital, and withdrawing it from the exclusive control of the local legislature of one of the Provinces. That which was designed to be the capital of the Confederation, might fairly rest its claim for support upon the people of the Dominion. Its order, well-being, sanitary arrangements, police regulations, adornments and improvements are essential to the comfort and security, not only of the representatives who attend Parliament, but of all those who are compelled to resort to it as the capital of the country in the discharge of the various duties attendant upon the administration of public affairs. Its reputation should be national, not provincial. It belongs no more to Ontario than it does to New Brunswick, Nova Scotia, Quebec or any of the provinces constituting the Confederation. The expenses incident to its civic control must

necessarily be far greater than would devolve upon it if merely an ordinary municipality. It is no answer to say that increased value in property is sufficient consideration for the increased burden put upon its inhabitants. That does not meet the question. They may not choose to accept the responsibility; and the Dominion Parliament, under Confederation, has no power to legislate upon the matter.

The legislation for the capital in all civil matters is entirely under the control of one province, differing in its laws from the others. The employees and officials of the Dominion Government, residing at Ottawa, numbering almost two thousand men, in every respect competent as voters, and under other circumstances, capable of enjoying and exercising their franchise, are wisely interdicted, by the policy of the Government of the Dominion, from interfering in the local Provincial politics, or taking part in the elections for the Provincial Legislature. Yet they are subject to the taxation imposed upon them by that Legislature; and bluff old Harry the Eighth never unfrocked a bishop with more satisfaction than the Ontario Legislature, for local purposes, taxes a body of men whom they do not pay, and who are debarred from exercising any influence upon the selection of their body.

Gray then goes on to describe favourably the experience of the United States with the District of Columbia, and concludes (p. 110):

Thus we see that the character of a national capital, the security of those who attend it, the elimination of sectional and provincial interests in its government, the preservation of the national public property, the protection of the public interests, and the maintenance of the national reputation in its status, are too important to be left to local councils, however good they may be.

Americans have their capital, Canadians have no capital for their country. They borrow a municipality from Ontario, and whether they come from the Provinces of the Atlantic or the Pacific, whether from Quebec or Manitoba, their representatives in the Dominion Parliament have no power to legislate on any matter touching the property or civil rights of the so-called capital of the Dominion, however great the wrong to be redressed or the evil to be remedied. This should not be.

The city of Ottawa, with a certain area around it, should be created a Federal District; the laws for its future government (not interfering with private rights, or the city's present municipal privileges without adequate consideration), should be passed by the Dominion Parliament, and carried out by officers responsible to the Dominion Government, and through it to the people of the whole Dominion; or by a territorial arrangement, as in the District of Columbia, the legislatures of Ontario and Quebec ceding such portion of territory on both sides of the river as would make the District thoroughly unprovincial, and stipulating such terms in the cession as would preserve existing rights and interests.

By "a territorial arrangement", Gray probably meant a territorial government such as that which had just been set up for the District of Columbia and which lasted for a short time. A territorial government for Canada's Federal District would not have been necessary at that time, of course, if the District were confined to a small area on the Ottawa side of the river and the city's government were to continue. In other words, Gray seemed to be proposing either that the city government should come under the direct control of Parliament, or that a larger district should be created including part of the Hull side of the river and governed by a territorial council. He does not make clear whether under the second arrangement the local governments would disappear.

By the turn of the century the idea of a federal territory was gaining ground. Eggleston mentions (p. 156) that in 1898 Laurier's Minister of Finance, W. S. Fielding, prepared a memorandum expressing the hope

that while Laurier was in Washington he would make some inquiries about the system of government for the District of Columbia, and stating that Fielding "would not be disposed to object to moderate contributions from the Dominion treasury" to develop the capital under a proper system of government. An extract from Lady Aberdeen's diary, written a few days later, implies that by a "proper system" Fielding had in mind something like a federal district on the Washington model:

Mr. Fielding says "Get Ottawa under a Commission like Washington and I am with you." Probably he is right for the Ottawa authorities have not been very wonderful up to now.²³

By 1906 the idea had gained such favour in Ottawa that a plebiscite was actually held on the issue. Out of a total vote of about 8,000, the proposal was defeated by only about 800 votes.²⁴ In other words, 45% of those who voted approved of a federally governed district.

The first and only official proposal for a federal territory was that made by the Holt Commission in 1915. Although this six-man Commission included the Mayors of Ottawa and Hull, and its cost was shared by these municipalities, the Commissioners stated flatly as their first recommendation that "the future improvements in the area about the Capital at Ottawa and Hull should not be attempted without first establishing a Federal District and securing for the federal authority some control of local government."²⁵

"At the outset," says their report (p. 23), "the Commissioners were confronted by the problem of control of the capital, and they formed the opinion that an indispensable requisite to the success of their plans would be the creation of a Federal District with federal control of the area composed of Ottawa, Hull and the surrounding suburbs. It is not certain that it would be necessary or wise to adopt for Ottawa in all respects the same kind of federal control that is applied to Washington. But it is certain that federal control alone will ensure the carrying out of really adequate plans. It is also certain that the dignity and beauty of the capital of Canada are not more the business of the people of Ottawa than of the people of Canada as a whole. It could not be expected that a municipality would be able to perform such a task on an adequate scale. It would require more money than they could afford, and a steady continuous policy which does not exist under municipal government. For the future of the national capital, control of the left bank of the Ottawa river and the City of Hull is vital. The two cities look at each other across a beautiful stretch of flowing water. Nature has made them part of one whole, and they can come under one control only by union in a federal district."

Other than this statement and a favourable description of the development of Washington under federal administration, the Commission provided no further justification or analysis of the implications of this proposal, and made no comment or proposal of any kind about the kind of governmental machinery that should be set up in the proposed federal territory. It is perhaps for these reasons that the proposal was not given more serious consideration by the federal government. Although

in 1928 Prime Minister Mackenzie King stated that a federal territory would eventually be necessary, nothing was done about the Holt proposal.

In 1938 Fred Cook, a former Mayor of Ottawa and member of the old Ottawa Improvement Commission, who had favoured the proposal for forty years, tried to revive it in a long series of articles in an Ottawa newspaper, but unfortunately proposed direct federal administration and the abolition of the local governments. In 1939 Carleton J. Ketchum, a journalist, published a short book, *Federal District Capital*, which reviewed the still unrealized Todd and Holt plan for redeveloping the Ottawa area, gave some information about federal capital districts elsewhere, and again proposed a federal territory for Ottawa, but without stating the nature or implications of the proposal in any detail. No extensive discussion of the problem has appeared since. A few influential individuals have publicly stated their support for the proposal, notably F. E. Bronson, former chairman of the Federal District Commission, before the Joint Committee of 1944, and Senator Connolly and M. J. Coldwell before the Joint Committee of 1956 (see Eggleston, pp. 182, 213). But public discussion of the issue was not revived until the appointment of the Royal Commission on Bilingualism and Biculturalism in 1963.

In view of the "mistake" made in 1867, as explained by Gray, the Holt recommendation of 1915, and the Prime Minister's favourable view in 1928, why has the proposal not been taken more seriously since Confederation, and especially since 1915? The main reasons in the early period seem to have been the strong tradition of local self-government in Ottawa, the small size of the federal service, the lack of federal interest in, and unwillingness to pay for building up an impressive national capital and the consequent early absence of the difficulties of divided jurisdiction inherent in the Confederation arrangement. Later, the fact that no full-scale study of the problem or of federal capitals elsewhere had been made, the constant reference to Washington as a model and the consequent identification of federal jurisdiction with authoritarian control, the fear that Ontario and particularly Quebec would be unwilling to cede the necessary territory, the onset of the Depression and the War, and Mackenzie King's apparent persuasion by Jacques Greber in 1937 that the planning problem could be solved without creating a federal territory—all seem to have been important factors.

In any case, the proposal has been revived by the Royal Commission, with a new justification. One of the complaints made by French Canadians has been that the French language and French-Canadian interests have not been given sufficient recognition outside Quebec and particularly that the federal civil service under-represents French Canada and is not sufficiently bilingual. At the first public meeting of the Commission in November, 1963, one of the Associate Chairmen, Mr. Davidson Dunton, had suggested the following question for consideration by persons or groups who proposed to appear before the Commis-

sion: "Do you think that Canada should have a federal capital district in which the two main cultures and the two official languages would be equitably represented?"

As a result, out of about 375 briefs submitted to the Commission about 60 of them dealt with this question—some much more fully than others, of course. About 50 of these briefs were in favour of a federal district, a few were non-committal, and only four were directly opposed. The majority of those in favour were from New Brunswick or Quebec. The ones that were non-committal or directly opposed came mainly from western Canada or the Ottawa area. Only seven were from the Ottawa area, with none from the Hull side. Of these, five favoured the proposal—a faculty group from Carleton University, the University of Ottawa (conditionally), and three personal briefs. The other two—from the Civil Service Association of Ottawa and the Union of Saint Jean-Baptiste Societies of Eastview—were non-committal.

One cannot, of course, take the opinions expressed in these briefs as in any way representative of Canadian opinion as a whole, since it is likely that only those most in favour of the proposal took the trouble to discuss it. Most of the discussions were less than two pages in length and contained little analysis of the problem. For the most part they complained about the lack of bilingualism in the capital, often objected to the statement of the former Mayor of Ottawa, Charlotte Whitton, that the City could not officially use the French language or bilingual signs because this use was not provided for by Ontario law, and concluded simply that federal control was desirable because the capital should become a model of bilingualism and biculturalism. The longest presentations were from the Conseil de la Vie française, Québec (7 pages), the Association des Educateurs de langue française, Québec (7 pages), the Chambre de Notaires, Québec (4 pages), the New Democratic Party of Ontario (4 pages), and three individuals: John H. McDonald, Ottawa (9 pages), Frank Flaherty, Ottawa (6 pages), and A. R. Kear, Fredericton (16 pages).

Only the briefs from these three individuals presented specific proposals. Mr. McDonald's brief was also presented in much the same form to the Murray Jones Commission, the Ontario Advisory Committee on Confederation, and the Committee on the Constitution of the Quebec Legislature. It proposed that the federal territory should have two Senators and should elect three or four members to the House of Commons, and that these might form a joint committee of Parliament, under the chairmanship of the Secretary of State or the President of the Privy Council, to consider the national capital budget. The Flaherty and Kear briefs proposed that the National Capital Region should become an independent eleventh province. Mr. Flaherty's proposal was also published in *Weekend Magazine* on June 29, 1963. Both had picked up a semi-serious proposal I had made the year before in *Maclean's* magazine, that the metropolitan areas of Toronto and Montreal should be provinces, and had applied it to the Capital Region. Both also used as precedents

the existence in other federal countries of capital "city states", such as Vienna, Mexico City, and Berlin under the Weimar Republic.

The hearings before the Commission stimulated considerable public discussion of the idea of a bilingual federal territory.²⁶ In the fall of 1965 Dr. Seraphin Marion, a retired professor from the University of Ottawa, published an article in *La Vie Franco-Ontarienne*, the bulletin of the French-Canadian Educational Association of Ontario, supporting the idea. He pointed out the favourable effect a federal territory would have on the Roman Catholic and French-speaking minorities in the Ottawa area, despite its unfavourable effect of reducing the French-Canadian minority in the rest of Ontario. Dr. Marion mistakenly claimed that there were 200,000 Franco-Ontarians in the Ottawa area. Table I shows that there were only 94,000 of French origin in 1961. However, he was nearly correct in his contention that the addition of the Hull side of the river to a federal territory would make it 42% French-speaking, 58% English-speaking and 60% Roman Catholic, so that the Roman Catholic majority would help to counterbalance the French-speaking minority. This article was summarized in Ottawa's *Le Droit* (Nov. 30, 1965) and also in English by the Canadian Press.²⁷

In the hearings before the Jones Commission on local government, of the forty-five submissions proposing changes, only one, that by Mr. John McDonald, recommended a federal district, and one, by the Green-belt Property Owners' Association, proposed a province, suggesting that provincial status is required effectively to represent and safeguard local interests against federal authority. On the other hand, several of the other briefs indicated strong opposition to a federal district, usually on the ground that they thought it would be the antithesis of democratic local self-government.

In March, 1966, the Quebec wing of the federal Liberal party adopted a resolution in favour of a bilingual capital district, and Horace Racine, M.L.A. for Ottawa East, having decided that the Jones Commission's recommendation for a regional government on the Ottawa side of the river was unacceptable, gave his support to the proposal for an eleventh capital province. The typical local press reaction was one of opposition, again based on the assumption that municipal governments would be abolished.²⁸

2. Summary and Analysis of the Arguments

Much of the case in favour of a federal territory has been presented in the earlier chapters describing the difficulties of divided jurisdiction, and in the preceding history of the proposal. It remains only to summarize the arguments here and to analyze them briefly. They may be reduced to four main arguments, all of which are closely related: (1) on grounds of principle the capital of a federal country should belong to the people of the whole nation and should not be located within the boundaries of any one province or city of that province; (2) precedents elsewhere demonstrate the superiority of a federal capital territory;

(3) the physical redevelopment of the capital would be much easier under a federal territory; and (4) the bilingual-bicultural nature of the National Capital would be greatly improved.

The Principle of a Federal Capital

John Hamilton Gray's eloquent exposition of this principle has already been quoted in full. His arguments as to why federal members of Parliament and civil servants resident in the capital city should not come under the laws of any one province are very convincing. To these may be added the argument that the far-away provincial capitals of Toronto and Quebec tend to neglect the interests of the Capital Region, especially since such a large proportion of its residents are non-political civil servants. Two opposing points, however, should be noted. Nine-tenths of federal civil servants are located outside Ottawa, and are subject to the laws of the provinces in which they live. Also, Ottawa and Hull have histories which pre-date Confederation, and a large proportion of their residents are not federal civil servants. In this respect, the Capital Region is a sort of "Siamese-twins" area—being at one and the same time the location of the National Capital and an old population centre with its own traditions of self-government and its own industrial, commercial and agricultural interests. Gray's arguments would have been truer of a newly created capital such as Washington or Canberra where from the beginning the overwhelming proportion of its residents were federal civil servants or their dependents. Nevertheless, since Ottawa is not a great industrial or commercial centre, well over one third of its residents are federal employees or their dependents. Throughout this century the federal government has become increasingly important as a source of employment in the area and is by now by far the largest employer.²⁹ A comparison of labour force distribution by major industry group in 1961 shows 33.2% in "public administration and defence" in the Ottawa metro area as compared with, for example, 5.5% in the Toronto area. This figure does not include the employees of a number of large federal Crown corporations in Ottawa, which would considerably increase the percentage. Nor does it include embassy staff, headquarters of national organizations, political lobbies or parliamentary newsmen. Probably three-quarters of the labour force in the area directly or indirectly are dependent for their employment upon the fact that Ottawa is the National Capital.

Precedents Elsewhere

Throughout the history of the argument over a federal district, reference has always been made to the existence of precedents elsewhere. Since the United States, as the original federal system, was regarded as a model for the rest of the world, and was close at hand, the example of the District of Columbia was constantly used. Gray devoted a considerable proportion of his argument to praising the American example, and every proposal since then seems to have done likewise, adding to it

the example of Canberra after its successful creation into a federal territory by the Government of Australia after 1909. Because of the constant reference to these two examples, they came to be regarded as the standard and only possible models. Unfortunately, both of them provided for direct administration by the federal government and allowed literally no self-government or voting rights for the local citizens. As a result, these facts became standard arguments against a federal territory for Canada. The facts that other arrangements were possible and that other federal capital territories existed with different arrangements, were ignored. For example, in an article entitled "We Don't Want a Federal District for Ottawa" (*Canadian Business*, Feb., 1958), J. Harvey Perry, a former senior civil servant, constantly identified the proposal with the existing arrangements in Washington and Canberra and used them as a *main reason* for opposing the idea.

Opponents often fail to note that Washington had a locally elected government until 1871, and that one of the main reasons for its failure and abolition was the lack of sufficient financial support from the federal government. Nor do they note that in recent years there has been a rising criticism of the lack of self-government and voting rights in Washington and Canberra. Self-government has not been granted to Washington because of the opposition of Southern representatives in Congress to giving political power to the majority negro population. The grant of voting rights in federal elections to the residents of the District of Columbia requires a cumbersome constitutional amendment procedure. Nevertheless, as a result of the growing criticism, the Constitution was amended recently to allow them to vote in presidential elections, and proposals are now being made for an amendment to give them representatives in Congress. In the Australian Capital Territory, until now the one member elected to the House of Representatives has had only the right to vote on matters affecting the Territory, but in future he will have full voting rights on all matters. The Australian Government also is considering proposals for replacing the present partly elected Advisory Council for the Territory with a fully elected governing council.

Those who favour a federal territory often fail to note that the main provisions for it must be placed in the Constitution and so cannot be adapted easily to social and economic change. The difficulty of obtaining voting rights in the District of Columbia is a case in point. Also, urban Washington long ago overflowed the boundaries of the constitutionally created District into the two surrounding states, and this has created frightful problems of governing and controlling the development of the whole metropolitan area. The lesson to be learned is that if a federally governed district is to be created, the provinces must cede enough territory to accommodate any conceivable future expansion of the built-up area. Projections indicate that the present National Capital Region will comfortably contain the urban population until the year 2000. But will it do so in the year 2050, or 2100?

No thorough study of other federal capital districts has been made

in Canada, the relevant information is not easily available, and not much is known about them. Many of them—such as Mexico City, Buenos Aires in Argentina, Caracas in Venezuela, Rio de Janeiro and later Brasilia in Brazil—are in South American countries which are not regarded as models of democratic government. But others do or did exist in countries having a stronger democratic tradition, such as Vienna in Austria, New Delhi in India, and Berlin under the Weimar Republic. In any case, all of them seem to provide for some form of local self-government, with varying degrees of local independence and voting rights, so that a study of their experience in this respect, and of their forms of territorial government, would be valuable.

The Physical Development of the Capital

From the beginning, one of the main arguments has been that the physical and aesthetic development of the Ottawa area into a capital worthy of a great country would be much more easily and fully achieved under a federal territory. The lack of a planned development of the area in the early years seemed to prove this contention, and the federal government was faced with the much more difficult and costly problem of re-development, especially in the urban core. Earlier chapters have described fully the difficulties of divided jurisdiction that were involved. Chapters III and IV described how these problems had been partly solved since the war, but pointed to new difficulties that were developing for the future.

The argument has always been that if the federal government had control over the physical development and government of the area, the plans for the capital could be much more ambitious and impressive in concept, and much more successful in execution. Experience elsewhere has demonstrated that a metropolitan plan cannot be successfully and completely carried out unless a corresponding metropolitan government exists or is created with authority to complete the plan.³⁰ On the other hand, the history of planning in the National Capital shows that generous federal financial support is able to overcome many of the present difficulties of divided jurisdiction. From a democratic point of view the participation of the local residents in both the formulation and execution of the National Capital Plan is desirable. Yet even under a federal territory this problem would still remain, and there would be inevitable conflicts of interest between the federal government and the local residents.

The Desire for a Bilingual-Bicultural Capital

The gist of this argument has already been given. There is no doubt that federal control of a capital territory, with proper guarantees for equal minority rights—linguistic, religious, educational and cultural—would make it possible for the National Capital to become a symbol and model of bilingualism and biculturalism for the rest of the country. Ottawa is already the most bilingual of the large cities outside Quebec.

Eastview is the only city outside Quebec that has a French-speaking majority. Except for one small city in Quebec (Sillery, population 14,000 in 1961), Eastview and Hull are the only cities in Canada whose population is half bilingual (see Table III). The addition of these cities to the capital would therefore greatly strengthen its bilingual-bicultural character.

The formation of a federal territory corresponding with the boundaries of the National Capital Region would greatly improve the whole ethnic, linguistic and religious balance of the capital's population. In 1961, 91% of the population of the Region resided within the Ottawa-Hull urban area. By 1986 it is predicted that the urban population will be 96.6% of the total.³¹ The 1961 census figures for the urban metropolitan area may therefore safely be taken as representative of the whole Region. The ethnic and linguistic proportions have not changed very much by 1966, nor are they likely to be altered significantly in the near future. The 1961 figures reveal that turning the whole Region into the federal capital would increase French Canadians as an ethnic group from one quarter to about 40% of the total population (see Tables IA, IIA). It would also increase those whose mother tongue is French from under one quarter to nearly 40%, and the number of people who could speak both English and French would increase from one quarter to over 30%. The ethnic distribution of the population would then be: Anglo-Saxon 44%; French 41%; and other, 15%. Those whose mother tongue is English would be 56%; French 38%; and other, 6%. Although English would predominate as a language, Anglo-Saxons and French would be about equally balanced as ethnic groups, and Roman Catholics would be in a comfortable majority (59%).

Since elsewhere in Canada the population tends to be either overwhelmingly English-speaking and Protestant or overwhelmingly French-speaking and Roman Catholic, the Capital Region would have the best-balanced ethnic, linguistic and religious population of any large metropolitan area or province in Canada (Tables IV and IVA). Its balance would, for example, be far superior to that of the provincial capitals of Ontario and Quebec. The only serious competitors would be New Brunswick and metropolitan Montreal. New Brunswick's ethnic and linguistic proportions are much like those of the Capital Region. Of the total population, 39% are of French origin and 35% have French as their mother tongue. However, only 6% are of other than Anglo-Saxon or French origin (compared with the Region's 15%), and fewer than one-fifth are bilingual (compared with the Region's nearly one-third). Just over half of them are Roman Catholic.

On most counts a federal Region would compare favourably with the Montreal area. Whereas about 40% of the Region's population would be of French origin, and 38% of French tongue, in metropolitan Montreal only 18% are of Anglo-Saxon origin, and only 23% are of English mother tongue. Whereas Roman Catholics are an overwhelming majority in metropolitan Montreal (78%), they would constitute only 60%

TABLE III
BILINGUAL AND FRENCH-SPEAKING POPULATION
OF SELECTED CITIES, 1961

	(Population in thousands)				
	Total	Bilingual	French Tongue	Percent Bilingual	Percent French
Ottawa	268.2	67.0	56.9	25	21
Eastview	24.6	12.9	15.0	52	61
Hull	56.9	27.9	51.4	49	90
Cornwall	43.6	19.0	18.5	44	42
Moncton	43.8	14.7	14.1	34	32
Lachine	38.6	15.3	20.7	40	54
Montreal	1,191.1	462.8	806.1	39	68
Outremont	30.8	14.2	15.3	46	50
Quebec	172.0	46.0	164.2	27	95
St. Boniface	37.6	13.5	13.4	36	36
St. Laurent	49.5	19.0	20.4	38	41
Sherbrooke	66.6	23.0	58.7	35	88
Sillery	14.1	7.1	11.7	50	83
Sudbury	80.1	23.2	23.3	29	29
Timmins	29.3	11.4	12.0	39	41
Verdun	78.3	30.9	44.7	39	57
Westmount	25.0	10.2	5.1	41	20

Source: Based on 1961 Census of Canada, Series 1.2: Population, Table 67.

of the population in the Region. Montreal has a slightly higher proportion (18%) whose ethnic origin is other than Anglo-Saxon or French. Also, its population is somewhat more bilingual than the region's population would be at the beginning (37%, compared with 30%).

In this respect it is interesting to compare what proportion of the English- and French-speaking populations can speak the other language. In the Capital Region only about 10% of those whose ethnic origin is from the British Isles and who speak English can also speak French, while in metropolitan Montreal nearly 30% of them can speak French. On the other hand, in the Region almost exactly two-thirds of those who are of French origin and who speak French can also speak English, whereas in the Montreal area only 42% of these can speak English.³² It is not surprising that in Montreal, where French is the majority language, a higher proportion of English-speaking people learn French than in Ottawa; or that in Ottawa, where English is the majority language, a higher proportion of French-speaking people learn English. But it is interesting that the proportion of the minority who have learned the majority language is much higher in Ottawa than in Montreal, while the proportion of the majority who have learned the minority language is very much higher in Montreal than in Ottawa.

Certainly, the number of English-speaking people in the proposed federal territory who would be able to speak French would at first be disappointingly small. However, since Ottawa's civil service is now becoming more bilingual, and since one of the main objectives of creating a federal territory would be to promote bilingualism, one could expect the proportion of people who can speak both English and French fluently,

TABLE IV
COMPARISON OF ETHNIC AND RELIGIOUS
CHARACTERISTICS OF POPULATION IN SELECTED
METROPOLITAN AREAS AND PROVINCES, 1961
(Population in thousands)

	Ontario	Toronto Metro	Quebec Province	Quebec Metro	Montreal Metro	Ottawa Metro	New Brunswick
<i>Ethnic Group</i>							
British Isles	3,711.5	1,107.2	567.1	14.2	377.6	189.2	329.9
French	647.9	61.4	4,241.4	336.8	1,353.5	175.4	232.1
Other	1,876.7	655.9	450.7	6.6	378.4	65.2	35.9
<i>Mother Tongue</i>							
English	4,834.6	1,398.3	697.4	13.4	494.7	239.3	378.6
French	425.3	26.0	4,269.7	341.2	1,366.3	162.0	210.5
Other	976.2	400.2	292.1	3.0	248.5	28.5	8.8
<i>Official Language</i>							
English Only	5,548.8	1,690.6	608.6	5.1	462.3	236.3	370.9
French Only	95.2	3.1	3,254.9	265.2	826.3	56.8	112.1
Both	493.3	78.3	1,338.9	86.7	776.6	132.5	113.4
Neither	98.8	52.5	56.8	.6	44.3	4.2	1.5
<i>Religion</i>							
Roman Catholic	1,873.1	478.6	4,635.6	350.5	1,641.7	253.6	310.6
Other	4,363.0	1,345.9	623.6	7.1	467.8	176.2	287.3
Total Population in Thousands	6,236.1	1,824.5	5,259.2	357.6	2,109.5	429.8	597.9

Source: Based on Table I and 1961 Census of Canada, Series 1.2: Population, Tables 35, 39, 42, 46, 64, 70.

TABLE IVA
PERCENTAGE COMPARISON OF ETHNIC AND RELIGIOUS
CHARACTERISTICS OF POPULATION IN SELECTED
METROPOLITAN AREAS AND PROVINCES, 1941

	Ontario	Toronto Metro	Quebec Province	Quebec Metro	Montreal Metro	Ottawa Metro	New Brunswick
<i>Ethnic Group</i>							
British Isles	59.5	60.6	10.7	3.9	17.8	44.0	55.1
French	10.3	3.3	80.6	94.1	64.1	40.8	38.8
Other	30.0	35.9	8.5	1.8	17.9	15.1	6.0
Total*	100.	100.	100.	100.	100.	100.	100.
<i>Mother Tongue</i>							
English	77.5	76.6	13.2	3.7	23.4	55.6	63.3
French	6.8	1.4	81.1	95.4	64.7	37.6	35.2
Other	15.6	21.9	5.5	.8	11.7	6.6	1.4
Total*	100.	100.	100.	100.	100.	100.	100.
<i>Official Language</i>							
English Only	88.9	92.6	11.5	1.4	21.9	54.9	62.0
French Only	1.5	.1	61.8	74.1	39.1	13.2	18.7
Both	7.9	4.2	25.4	24.2	36.8	30.8	18.9
Neither	1.5	2.8	1.0	.1	2.1	.9	.2
Total*	100.	100.	100.	100.	100.	100.	100.
<i>Religion</i>							
Roman Catholic	30.0	26.2	88.1	98.0	77.8	59.0	51.9
Other	69.9	73.7	11.8	1.9	22.1	40.9	48.0
Total*	100.	100.	100.	100.	100.	100.	100.

Source: Table III

*Totals do not add exactly to 100.0, due to rounding of figures.

and in particular the number of English-speaking people who can speak French, to rise rapidly.

These comparisons show that though the ethnic and linguistic balance in the federal territory would be good, it would be far from perfect. For this reason the political difficulties of creating and governing the territory would not easily be solved. Although the addition of the Hull side of the river would certainly add strength to the French minority on the Ottawa side, French Canadians would still be slightly in the minority. Yet one could expect their position to improve further if the proportion of French-speaking civil servants were increased, as may be expected. Moreover, linguistic and educational guarantees in the constitution of the new territory could further protect their position, even though the Parliament of Canada, which would be the ultimate governing authority, has an English-speaking majority. As Dr. Marion has pointed out, the position of the Franco-Ontarians in the Ottawa area would be greatly improved, compared with their present position under the laws of Ontario. Even if they did not consider it an ideal arrangement, from their point of view it would certainly be by far "the best of evils."

The Hull side of the river, however, would have far less to gain. At first glance their position would appear to be considerably worsened. The reaction of Gatineau's M.L.A. to Mr. Flaherty's proposal for a capital province was to object to it for this reason.³³ Yet with suitable guarantees for minority rights, and especially if a considerable measure of local self-government were granted to the Hull side, this may be a false fear. By becoming constitutionally *part* of the national capital, Hull could expect to participate much more fully in, and to benefit much more financially from, the beautification of the capital and the redevelopment of its urban core. For example, many more federal buildings would be located on the Hull side of the river. Although the effect of this might be to increase the English-speaking population, one could also expect many more French-speaking civil servants to live on the Hull side. These would include educated senior officials, some of whom would become leaders in the local community. The position of French Canadians on the Hull side of the river might therefore be improved by becoming part of a federal territory.

The creation of a federal territory would itself be very likely to stimulate a rapid growth of bilingualism, especially if the educational system in the territory were reorganized so as to provide genuinely bilingual public and separate schools with instruction given in both languages. On the Ottawa side of the river the difficulty at present is that in most areas there are not enough non-Catholic French-speaking families in any one area to justify the creation of a bilingual public school. This is true even of separate schools in a predominantly English-speaking area. The Separate School Board of Nepean, for example, recently refused the request of an organized group of French-speaking families for such a school because only the first grade would have a large enough class. As a result, some of these families are moving from the township because they fear

that their children will lose the ability to speak French. The answer to the problem lies in direct encouragement and financial subsidies from a higher level of government to support small, uneconomic schools of this kind, or to transport the pupils to larger schools. At the same time, there are now a number of English-speaking parents who would like their children to become bilingual by attending bilingual public or separate schools. If the schools were easily available, and with proper encouragement, many more English-speaking parents would desire their children to attend. This attendance would increase the size of the schools and make them a much more economically feasible proposition.

There is also a need for bilingual schools on the Hull side of the river. But there the need is not as great because the English-speaking minority is not in as much danger of losing its mother tongue and the French Canadians tend to become bilingual in any case. Nevertheless, somewhat the same need exists for establishing bilingual Catholic schools where part of the instruction is given in English, and bilingual Protestant schools where part of the instruction is given in French.

3. The Proposal for a Capital Province

The proposal made by Mr. Flaherty and Mr. Kear that the National Capital Region should be carved out as Canada's "eleventh province" is much like the proposal for a federal territory with an elected territorial government. The use of the term "province" in the proposal has many attractions. It avoids the confusion that has arisen over the term "Federal District" because of its former use to describe the area of jurisdiction of the former Federal District Commission, and it avoids the stigma that has become attached to this term by constant association with the Federal District of Columbia and the absence there of self-government and voting rights. The term "province" in the proposal is arresting and dramatic, and as an added attraction for the local residents, implies a high degree of local autonomy and self-government. For these reasons, there is much to be said in favour of using this term in public discussion to describe the proposal for a separate capital territory.

At the same time, it should be realized that the National Capital Territory could not be given the same constitutional independence and power as a province. For then the federal government would have no direct control over its own seat of government. To make the National Capital Region into a province with virtually the same constitutional independence and autonomy as the existing provinces would place the federal government in much the same powerless position as it is now in relation to the National Capital: the capital would again be under the control and laws of a single province. There would no doubt be advantages to this new arrangement. The metropolitan area would come under the unified control of a single provincial legislature, which would, unlike the governments of Ontario and Quebec, single-mindedly concentrate its attention upon solving the problems of this area alone. But the position of the federal government in relation to the new province would be the same as

it is now in relation to the two provinces of Ontario and Quebec regarding control of the National Capital Region. Constitutionally, its control over the area would be left unchanged, and the same difficulties of divided jurisdiction would remain.

Moreover, the proposal assumes that political parties would continue to operate in the new province. This would raise the problem of the exclusion of federal civil servants from participation in "provincial" political activities. They and their families would almost constitute a majority of the population in the new province. It would also raise the even more difficult problem of federal-"capital province" political relations, as demonstrated by the experience of Austria. In Austria—where the capital city, Vienna, has the status of a state in the federation—between the wars a Christian Democratic federal government was constantly faced with an unco-operative Socialist government in control of the national capital. Once the government of the new province came into power there would be no guarantee that the objectives of those who had created the province would be achieved. For example, the English-speaking majority in the area might decide *not* to promote the objectives of bilingualism and biculturalism.

The examples of other "city-states" used by Mr. Flaherty and Mr. Kear are not strictly relevant because some are not federal capitals and because the states in their federations are not as autonomous as Canada's provinces. Moreover, the capital city-states cited, Vienna and Berlin, are huge industrial and commercial centres with a wide range of interests and a long tradition of independence. There the federal government's interest in the urban area as a seat of government would not predominate as it does in Ottawa, and the case for full status as a state would be stronger.

It would therefore seem that in any new arrangement for the government of the National Capital Region, the federal Parliament must have ultimate authority, subject to any superior constitutional guarantees that would be placed in the *British North America Act* by agreement between the federal government and the provinces. These guarantees could be placed in the Constitution just as easily for a federal territory as for a province.

However, the concept of a "capital province" is useful as an analogy. It highlights what fundamental constitutional, legal and political changes would be needed in the creation of a federal territory. All of the powers now possessed by the two provincial governments in the National Capital Region would have to be taken over by the federal government and a new territorial government. And the services now provided in the Region by the two provinces would similarly have to be taken over except that at first they might continue to be provided by agreement with these provinces. Similarly, what are now provincial taxes would have to be decided upon, levied and collected by either the federal or territorial government. Also, the present federal-provincial tax-sharing agreements and the system and level of federal grants to the provinces would have

to be used as a guide for the financial arrangements between the federal government and the new territorial government.

VII. The Arguments Against a Federal Territory

The case against a federal territory may be summed up under these four broad arguments: it would be both constitutionally and politically difficult to create such a territory, especially because of local opposition and Quebec's reluctance to cede territory to the federal government; the problem of governing it as a unit would be insoluble because of the double-splitting of interest—federal versus local, and French law, language and culture on one side of the river versus Anglo-Saxon on the other; other alternatives are available; in any case, a federal territory is not needed. Let us consider each of these in turn.

1. Difficulty of Creating a Federal Territory

From a constitutional point of view the creation of a federal territory does not appear to present any great difficulty. As John H. McDonald has pointed out in his brief, (p. 18), the *British North America Act* was amended in 1871 to provide that the Parliament of Canada may alter the boundaries of a province with the consent of that province. The relevant provisions are as follows:

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby.
4. The Parliament of Canada may from time to time make provision for the administration, peace, order and good government of any territory not for the time being included in any Province.

It would therefore be possible for the federal government to arrange for the provinces to cede the necessary lands without a constitutional amendment.

Politically, however, the creation of a federal territory would no doubt require such an amendment, because it would affect the rights and interests of a large number of the residents of Ontario and Quebec. The power of the federal government to amend the Constitution is at present governed by the provisions of the 1949 amendment to the *B.N.A. Act*, which provides that the federal Parliament has power over "the amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a Province, or to any class of persons with respect to schools, or as regards the use of the English or the French language . . ." Since the ceding of territory by Quebec would affect the language and school rights of Quebec and of a considerable

number of its present citizens, it seems clear that the instrument creating a federal territory would have to be in the form of a Statute passed by the United Kingdom amending the *B.N.A. Act*. Constitutionally it would require the consent of only Ontario and Quebec, but politically it would be wise to secure the consent of the remaining provinces.

The desirable linguistic, cultural, educational and religious guarantees for the residents of the territory could be worked out by agreement with Ontario and Quebec and placed in the Statute creating the territory, so that they could not be abrogated or changed by the federal government without the agreement of these provinces and an amendment to the Imperial Statute. If it were thought that the objectives of promoting bilingualism and biculturalism should be emphasized, these objectives could be included in the Statute. Similarly, certain essential features of the form of government for the new territory might also be placed in the Imperial Statute so that they could not be changed without the consent of the other provinces, or at least Ontario or Quebec. For example, to ensure a desirable degree of self-government for the territory, it might be specified that the local residents shall elect representatives to Parliament, to the territorial council or legislature, and to local governments in the Region. Even the main outlines of the structure of government for the territory might be specified in the Statute but with the instruction that this structure may be changed in future by a simple Act of the federal Parliament. This would be somewhat like the provision in the *British North America Act* of 1867 for the constitutions of Ontario and Quebec until such time as their legislatures might decide to amend their constitutions. It would have the advantage of allowing provincial participation and agreement in drawing up the original constitution for the territorial government but at the same time would preserve flexibility by allowing the federal Parliament to make minor changes and adjustments in future by itself.

More impressive than the constitutional difficulties of creating a federal territory are the political ones. A standard opposition argument has been that Quebec would not agree to the loss of territory and population. However, the strength of this argument may be over-estimated. Ontario would be giving up over 400,000 of its population, while Quebec would lose only about 125,000. If the federal territory is to become a model for the protection of minority rights and for the development of bilingualism and biculturalism, Quebec may easily be persuaded that it has more to gain than to lose.³⁴

A second standard argument has been that the local municipalities and residents would unalterably opposed to the creation of a federal territory. This argument is an impressive one, because the fact is that local civic politicians have frequently, and in recent years almost consistently, voiced their opposition to the proposal. Examples of such statements are contained in their evidence before the parliamentary Joint Committees of 1944 and 1956. The assumption is always made, however—and this is always given as the main reason for their opposition—that local self-

government would disappear and the local residents would lose their political rights. This argument would be answered by a proposal which included the preservation of local self-government and the election of representatives to a territorial government and to Parliament. It is difficult to know what the attitude of local politicians and residents would be if they were faced with this kind of proposal, but I suspect that the force of opposition would decline greatly and local opinion might even change in its favour.

This raises the interesting question of the extent to which local consent should be sought for such a proposal. It seems to me that on theoretical grounds the consent of a majority—say in the form of a plebiscite—should not be required. Indeed, one can argue that on such an issue the interests of the people of Canada in the National Capital and in the objectives sought by the creation of a federal territory should override if necessary the opposition of a small minority of the country's population residing in the territory. But this would depend, of course, upon the strength of feeling of the local opposition. As long as a significant proportion of the local population seemed to be in favour of the idea, and no significant group were strongly opposed, the federal government, with the agreement of the two provinces, could justifiably proceed. In any case, the governments of Ontario and Quebec would not be likely to agree to the proposal in the face of strong opposition from a significant proportion of their local constituents.

The strongest opposition would very likely come from the Hull side. Hull feels so strongly about its past neglect by the federal government that the latter would have to make a clear commitment to finance a large share of the redevelopment of downtown Hull and to place new federal buildings there. This commitment would make sense in any case. Many people think that federal departments are now becoming physically too decentralized. Downtown Hull is in the heart of the capital. Placing key federal departments there would improve inter-departmental and policy co-ordination. It would also promote bilingualism. The resulting increase in population on the Hull side, however, would require important changes in the National Capital Plan and in the recent Ottawa-Hull transportation plan.

2. The Problem of Government

The problem of governing a federal territory means reconciling a two-way split: the split in legal systems, laws, political traditions and interests between the two sides of the river, and the split between the interests of the federal government in its own seat of government and the desire of the local residents to govern their own affairs. Opponents of a federal territory argue that the differences between the two sides of the river are so great that they would be extremely difficult, if not impossible, to reconcile, and that the creation of a federal territory would wipe out local self-government.

Regarding the first of these arguments there is no doubt that the dif-

ference in legal systems and provincial laws now in force on the two sides of the river would create problems. It should be pointed out, however, that the courts and laws need not necessarily be integrated or unified. The constitutional instrument creating the territory simply could provide that the legal systems and laws of Ontario and Quebec shall continue to be in effect unless and until they are changed by the Parliament of Canada or the new territorial government. In the creation of new governmental authorities this type of provision is quite common. One would expect any integration of the two legal systems to be done only gradually and over a long period of time, and only if and when it seemed desirable.

As John H. McDonald has suggested in his brief, the new territory would simply take over the two court systems as they now exist on each side of the river, except that it would, of course, provide for the use of the French language in the courts on the Ontario side. The Exchequer Court of Canada could be made the Court of Appeal for the territory. Local police could continue as before, and policing formerly done by the governments of Ontario and Quebec could be provided by the R.C.M.P. in the same manner as it provides policing for the other provinces.

Some legal difficulties would arise from placing the civil code and common law under one legislative jurisdiction, such as a case involving residents on each side of the river, or where the principal in a case was resident on one side, but the transaction took place on the other. However, similar difficulties occur now in cases including both the civil code and the common law in Quebec and the other provinces. The principles applied to these cases could be used as a guide. It should be recalled that the same type of situation existed for some years before Confederation, when Upper and Lower Canada were united under one legislature.

More serious than the division of legal systems are the political problems that might arise in governing the territory. These cannot be easily predicted. Although the whole territory would show a reasonable ethnic, linguistic and religious balance, there would still be a predominant French-speaking majority on the north side of the river, and a predominant English-speaking majority on the south side. Could these two groups be successfully united under a single territorial government, or would the union be relatively unsuccessful, like the union of Upper and Lower Canada before Confederation? If so, a possible solution might be to create two territorial councils—one for each side of the river—though this would mainly defeat the purposes for which the territory was created. At any rate, the difference in traditions and political interests on the two sides argues for the continued existence of municipalities and of a large measure of local self-government on each side.

The argument that the creation of a federal territory would wipe out self-government in the area is setting up a straw man in order to knock him down. Few people would seriously propose the abolition or denial of political rights as in the District of Columbia or Canberra. But the argument does raise the difficult problem of the division between federal and

local interests in the territory, and of balancing these interests through a proper system of representation. Certainly, the creation of a federal territory will bring with it no magic solution to the problem of governing a large and populous area.

Many of those who have proposed a federal territory would be quite willing to concede that a proper representation of local interests requires the continuation of local self-government, continued election of representatives to Parliament, and as a substitute for electing representatives to a provincial legislature, the election of members to a territorial council. It has also been suggested by Mr. McDonald and Mr. Kear that the territory might be allotted several Senators. Mr. Kear has suggested that one of the territory's Members of Parliament might traditionally be included in the Cabinet and that another local constituency might form the basis for electing a permanent Speaker for the House of Commons.

Except for the Kear and Flaherty proposals of a fully organized provincial government for the territory, most proposals have been rather vague about the extent of local representation in the territorial government, and even whether there would be such a government. Probably the most detailed proposal was the one made by Mr. McDonald in his briefs to the Bilingualism and Jones Commissions. He has suggested a seven-man territorial commission consisting of a mayor or chairman elected for five years, three commissioners elected at large for six-year overlapping terms, and three commissioners appointed by the Ontario, Quebec and federal governments, the latter appointee to be a senior civil servant. The commission would have a single chief administrator comparable to a city manager.³⁵

It seems clear that a territorial government would be desirable, for at least two reasons. Otherwise, no special governing authority would exist to take over the powers or provide the services now handled by the two provincial governments. Transferring these powers and services directly to the federal level would very likely overburden Parliament. Secondly, the residents of the territory would lose the extra representation they enjoyed by electing members to a provincial legislature. For this reason, a territorial government should exist to which they could elect members.

The questions are, however, what should be the powers and form of this new government, and what should be the division of representation in it between the central government and the local residents, in order to give a proper balance of national and local interests?

As already pointed out, a territorial government could not have the same status and independence as a province because of the special nature of the federal government's interest in the control and development of its own seat of government. Its constitutional position should be more like that of the governments of the Yukon and the Northwest Territories. Hence the constitution and organization of their territorial and municipal governments might provide some useful precedents. Because of the size, complexity and large future population of the area, and the fact that a territorial government would eventually be taking over services

formerly held by the provincial governments, its responsibilities would no doubt be great. One would expect it to possess most of the powers of a provincial government as outlined in Section 92 of the *British North America Act*. Yet these powers should be granted by delegation from the federal Parliament, rather than exercised exclusively by the territorial government. Similarly, even if the powers and structure of the territorial government are spelled out in the Imperial Act creating the territory, these should be made mainly amendable by the Federal Parliament acting alone, rather than by either requiring provincial consent or allowing the territorial government to amend its own constitution. Otherwise, the territorial government would become too independent of the federal Parliament. So that it will not be regarded as having the same degree of independence as a province, the territory's representative body should be called a "council" rather than a "legislature", and it should pass "ordinances" rather than "laws."

For the same reason, and also because of the high proportion of federal civil servants in the area, the territorial government should not be controlled by political parties. Nor should it have a cabinet form of responsible government, which encourages the formation of parties. Yet, unlike Mr. McDonald, I think the territory's council should be fairly large in order to represent the great variety of interests in the territory, and to deal with the important "provincial" matters that will come under its jurisdiction. Since it should not have a cabinet as its executive body, provision could be made for an executive committee chosen from the council, as in the council of Metropolitan Toronto. The chairman of the council and its executive committee might be appointed by the federal government (just as the first chairman of the Toronto Metropolitan Council was chosen by the Ontario government). The government might even name a Cabinet minister as chairman. Or the chairman might be elected by the territorial council (as the chairman of the Toronto Metropolitan Council is chosen now).

What should be the division between federal and local representation on the territorial council? Obviously the council should not be entirely federally appointed or there would be a serious danger of disregarding local interest. On the other hand, if the council were all locally elected, there would be a danger of its disregarding the national interest, just as locally elected councils in the area have done in the past, and as the elected council in Washington seems to have done before local government was abolished there in 1871. Mr. Flaherty has suggested in his article (p. 23) that the federal and local interests might be represented by having a two-chamber legislature—a locally elected lower chamber and a federally appointed upper chamber with a veto power. While this would neatly divide the appointed and elected representatives, it might also divide federal and local interests too much. A more successful arrangement might be to have federally appointed and locally elected representatives in the same chamber and in about equal proportions. To promote a closer co-ordination of national and local interests, one or two

cabinet ministers, the M.P.'s and Senators for the territory, and the members of the National Capital Commission who are not from the local area, could be appointed as federal representatives on the territorial council.

The local residents should perhaps be granted a majority of the representatives, since the federal Parliament would be legally superior to the council and would be financially predominant. It could exercise its ultimate legal control if necessary, and could exert a powerful influence through its financial support to the territory. It would therefore seem safe to provide for a locally elected majority at the beginning. If this did not work successfully, the federal government could change the arrangement by amending the constitution of the council. The local residents should, I think, be granted the right to elect their representatives *directly* to the council, in order to grant them the equivalent of their previous right to elect representatives directly to a provincial legislature, and also because of the importance and volume of the issues with which the territorial council would deal. One could not expect municipal councillors to serve double duty on the territorial council as they do on the Toronto Metropolitan Council.

Since the territory would be governed by an English-speaking majority, and would come under the ultimate control of an English-speaking majority in Parliament, it would perhaps be wise to slightly over-represent the French-speaking population on the territorial council. This could be done most easily by over-representing the population on the Hull side of the river. If it were done by constitutional provision, the likelihood of Quebec and the Hull side agreeing to the creation of the territory would be greatly increased.

What services would the territorial council provide? It would have the power to provide basically the same services as the provinces now provide in the area, plus any federal powers and services coming under Section 91 of the *B.N.A. Act* delegated to it by Parliament. One would expect the provinces to continue to provide their services, by agreement with the federal government, until such time as the council is prepared to take on their administration and to reorganize them. For example, the council might decide at an early date to reorganize education in the territory in order to provide equality of services. If the promotion of bilingualism were stated as an objective of national policy in the territory's constitution, the council might decide to increase dramatically the extent of bilingualism in the territory, especially among the English-speaking population, by providing that in English-speaking areas the instruction in elementary schools should be given partly in French, and in high schools almost wholly in French. The same approach could be taken towards English language instruction in entirely French-speaking areas. It might also make adult classes in oral French and English much more easily available, and encourage the creation of a bilingual theatre group, bilingual radio and television stations, movie theatres, etc. It might even decide, with the federal government's help and in collaboration with Carleton and Ottawa universities, to organize a great national bilingual

university or graduate school in the territory, like the Australian National University.

Since the territorial council would be expected eventually to deal with the whole range of services provided and with the taxes now levied by the provincial governments, there would still be plenty of room for local governments to continue to provide municipal services. Their powers would be delegated to them by the territorial government, and it would have the power to reorganize them, perhaps subject to federal approval.

The existing municipalities on each side of the river could continue to operate under their respective provincial laws until changed by the territorial council. The council could then reorganize them and eventually adopt a comprehensive municipal code for the whole territory, picking the best features from the laws of Ontario, Quebec and elsewhere. The council might decide that the city governments of Ottawa and Hull should continue to exist but that there should be some consolidation of local government in other areas already urbanized or about to be urbanized—for example, that Hull should annex the area as far west as Aylmer and as far east as Gatineau, and that new city governments should be created for the three projected urban areas beyond Ottawa's Greenbelt. On the other hand, it might decide that the best solution to the urban problems of the area would be to leave the existing municipal boundaries relatively untouched and to take over and administer metropolitan-wide services directly. However, this would place a heavy burden on the territorial government. In view of the different traditions on the Ontario and Quebec sides of the river and of the physical splitting of the urban area by the river itself, this plan also might impose an undesirable degree of uniformity in metropolitan services without significant savings in cost and efficiency.

For these reasons, the council might decide instead to create two second-tier metropolitan councils on the Toronto model, one on each side of the river, representing the local municipalities in each area. Although this would have much to commend it from the point of view of preserving local government and at the same time solving urban metropolitan problems, it would still leave an administrative gap between the Ottawa and Hull sides of the river, and would create a four-level division of responsibility—federal, territorial, metropolitan and local. One might easily argue that this pattern would be even more complicated than the present three-level division—federal, provincial and local. But the difference would be that each level would be legally and constitutionally subordinate to the next, so that there would not be the same constitutional difficulty of divided jurisdiction. Also, there would be a cross-representation of interests at all levels. The local units would have representation on the metropolitan councils, and local residents would have representatives on the territorial council, who would meet and reach agreement with federal representatives on that council. A complex social situation, requiring both diversity and interdependence, also requires complex interlocking governmental arrangements. It would not be as

complex as the four-level division that the Jones Commission proposal for an Ottawa regional government would have created. The territorial council would have the power to require joint action by the two metropolitan governments, and could control or take over any service that concerned both sides of the river, such as pollution control and public transportation.

No matter what system of local government it created, the territorial council could be the focal point for the revision, approval, and completion of the National Capital Plan. Although the National Capital Commission might continue as a manager of federal properties in the area, its planning functions could be transferred either to a committee of the territorial council, which would have both federal and local representatives, or to a new planning commission which would be an arm of the territorial council. The new commission could have representatives named by the federal, territorial and metropolitan (or local) governments. The present planning staff of the National Capital Commission could be taken over by the territorial council to work either for the planning committee or for the new planning commission, and the federal government could afford to pay for all or most of the cost of this staff because of its saving on N.C.C. staff.

The National Capital Plan and any proposed revisions to it would, of course, have to be approved by both the federal government and the territorial council. Once it was approved, the council would have the power to carry out the Plan fully and completely. The council could require all local municipalities to prepare detailed plans that are in general conformity with the Master Plan, in somewhat the same way as local municipalities in the Ottawa Planning Area are expected to prepare plans in conformity with the official plan for the Area.

With the promise of generous financial support from the federal government, the territorial council would therefore be able to call for a bold and imaginative new Federal Capital Plan, a Plan that would require the creation of a revolutionary new network of freeways and other roads (as proposed in the Ottawa-Hull Area Transportation Study), the controlled development of the projected new cities beyond the Greenbelt and on the Hull side, and the reconstruction of the cores of Ottawa and Hull into a civic centre worthy of a national capital.

This outline of the changes that could come about under a territorial government is only a vision of what *might* be achieved. As long as the decisions are left partly to locally elected representatives—and this is the way it should be in a democracy—there is no guarantee that these objectives *would* be achieved. All one can argue is that they would *more likely* be achieved under a territorial government.

3. Alternatives

There are, of course, less far-reaching alternatives to the proposal for turning the National Capital Region into a federal territory. One is the idea of restricting the federal territory to the Ontario side of the

river. This idea would solve the problem of the difference in legal systems, laws and traditions between the Ontario and Quebec sides of the river, and would avoid the difficulty of gaining Quebec's agreement to ceding the necessary territory. It would also make unnecessary the creation of a second-tier metropolitan government on the Ontario side. However, it would not create as good a linguistic and cultural balance and would leave the French-speaking Canadians within the territory in a much smaller minority. Nor would it be as good a solution to the problem of implementing the National Capital Plan on the Quebec side. Nevertheless, the co-operation of the new territorial government, and the continuing co-operation of a reorganized National Capital Commission with the Quebec Government and the municipalities on the Quebec side, might go far toward solving this problem. For example, the Government of Quebec and the local municipalities might be persuaded to create a planning body and a consolidated or two-tier metropolitan government for the whole urban area on the north side, with powers to complete the National Capital Plan on that side. In order to promote co-operation, the N.C.C. could include representatives of these new authorities, and could invite them to propose revisions in their share of the Plan.

A much less far-reaching alternative was proposed to the Bilingualism Commission by the Saint Jean-Baptiste Society of Eastview: that French should be made an official language in Ontario's legislature and municipalities. Alternatively, the federal government might achieve the objective of official bilingualism in the Ottawa area by attaching appropriate conditions to its grants to local municipalities for shared national capital projects. However, neither of these proposals would go far enough toward meeting the problems of bilingualism and biculturalism in the area. They would only change the status of French in the conduct of local government. Many more educational and cultural changes would be required to make the area truly bilingual and bicultural.

Another proposal, which is restricted to an attempted solution of the purely planning problem, is that the federal government could achieve the objective of a much more imaginative redevelopment of the centres of Ottawa and Hull by a radical extension of its policy of purchasing or expropriating the land that it wishes to control. Now that its power to expropriate land for the purposes of the National Capital Plan has been constitutionally validated by the Supreme Court, it could buy or expropriate the whole of the business sections that are directly adjoining or opposite Parliament Hill. The capital cost of this move would be tremendous, but the federal government could eventually recoup a great deal of the cost through redeveloping these areas and reselling blocks of land to private interests for use or for reconstruction under appropriate regulations for conformity with its plan for redevelopment. If there were doubts about the constitutionality of the federal Parliament's power to do this, it could perhaps buttress its case by declaring the reconstruction of the core of the national capital to be a "work

for the general advantage of Canada," under Section 92, subsection 10 (c) of the *B.N.A. Act*, although it is doubtful whether the Courts would accept this as being a "work or undertaking" within the meaning of the Act.

This proposal may not be as breath-taking as it seems upon first impact, because the Ottawa-Hull Area Transportation Study projects a considerable rebuilding of the business core of Ottawa by 1986. It expects, however, that a good deal of the cost will be borne by the provincial and local governments. If the federal government expropriated and redeveloped this area it would face its former difficulties of opposition from private interests, lack of co-operation from the provincial and municipal governments, and insufficient provincial and local sharing of costs.

An alternative proposal is the delegation of provincial and local planning and other powers to the National Capital Commission. This proposal has been made a number of times in the past—for example, by Mr. Cauchon in his report of 1922, and by Mr. Watson Sellar, former Auditor-General, in his evidence before the parliamentary Committee of 1956, where it generated considerable discussion. While it would be constitutionally possible for one level of government to delegate powers to the agency of another, it would be difficult in practice to co-ordinate the delegation of uniform powers from both of the provincial governments and all of the municipalities. The delegation of any extensive powers would be politically unacceptable unless the National Capital Commission were in some way made directly representative of provincial and local interests in the area. For these reasons the delegation of power would very likely be restricted to a general control over the completion of the National Capital Plan. Like the previous proposal, its adoption would provide no solution to the more general problems of bilingualism and metropolitan government in the national capital.

4. Conclusion

A more general argument against a federal territory, which sums up most of the others, is that it is not needed: most of the problems it would solve are gradually being solved anyway, and the slight benefits to be achieved would not be worth the far-reaching constitutional, legal and political disturbances that would be required. To test the validity of this argument, one must balance the time, effort, energy and cost that would have to be put into the creation of the new territory against the benefits that might be achieved; and this in turn requires a consideration of the extent to which the four main problems—revising and implementing the National Capital Plan, governing the metropolitan area, achieving a bilingual and bicultural capital, and generally overcoming the difficulties of divided jurisdiction—are now being solved or may be solved without the creation of a federal territory.

It seems clear that if a federal territory is not adopted, many changes and improvements must be brought about in order to achieve results

that are in any way comparable with the results probable under a federal territory. With regard to revising and implementing the National Capital Plan, for example, the provinces and local municipalities must be brought much more intimately into the planning process. This could be done most directly by providing for locally-named representatives on the National Capital Commission and adding provincial representatives. Moreover, suitable machinery for local planning and metropolitan government must be created for the whole Ottawa-Hull area. For instance, the membership and jurisdiction of the Ottawa Planning Area Board should be extended to include all of the future urban area on the Ottawa side, or preferably to include the boundaries of the National Capital Region, and the Ontario Government should ignore the Board's decisions only for very good reasons. On the Hull side two general planning committees already exist, one each for the urban areas east and west of the Gatineau river, but they are insufficiently supported by the provincial government. The municipalities in these areas are under no compulsion to adopt the committees' plans. Although the committee for the west side prepared a Master Plan report in 1964, an official of the Quebec Department of Municipal Affairs made this significant comment: "Its final report was handed in to the municipal councils concerned, and it is now up to these to carry out (or not carry out!) as they see fit the conclusion of the above report."³⁶

A revised National Capital Plan will not be carried out satisfactorily, nor the urban area governed adequately, until some form of metropolitan government is created on each side of the river. The political prospect for the creation of metropolitan governments on each side is, I would say, fairly good. Many of the municipalities on the Ottawa side have already agreed that some form of two-tier metropolitan government is desirable. A move on the Ottawa side, especially with support from the Quebec Government, would no doubt stimulate a similar move on the Hull side. If no metropolitan governments are created, especially on the Ottawa side, the prospects for controlling the future development of the capital area are not good, and the proposal for a federal territory will become more and more attractive.

Regarding the bilingual-bicultural objective, the improvement of the national capital in this respect depends largely upon changes encouraged or required by the Ontario Government. The Government is already instituting changes in the school system designed to improve and extend the teaching of French, and it may decide to encourage or to require the use of French as an official language. But it is unlikely that these changes will come fast enough or go far enough to approach what might be achieved under a federal territory. If progress in this respect is slow, the attitude of Quebec and of the French-speaking Canadians in the area may shift rapidly in favour of a federal territory.

The principle that the federal government should have ultimate and comprehensive control over its own seat of government would, of course, be impossible to satisfy without the creation of a federal territory. Under

the present system the old constitutional difficulty of divided jurisdiction will inevitably continue. The creation of a federal territory is often said to be difficult, if not impossible, because the co-operation and agreement of all interested parties—federal, provincial and local—would be needed. Yet even under the existing system a proper solution to all of the capital's problems requires many and continuous co-operative arrangements between all these parties.

The problem of balancing the probable advantages obtainable under a federal territory against the improvements that may take place in future without its creation is, however, a difficult one. No full-scale study has ever been made of the proposal, of the experience of federal districts elsewhere or of a detailed consideration of the problems of creating and governing a federal territory. The Bilingualism Commission has been studying the National Capital Region and may issue a report with recommendations for it, probably late in 1967. However, it is likely to concentrate on the bilingual-bicultural aspects of the problem. For these reasons, the Government of Ontario may wish to consider putting the proposal on the agenda of a federal-provincial conference and asking that a study committee be set up. This committee might be composed of persons named by the federal government, by at least the two provinces concerned, and perhaps also by the two main cities in the area. It could be asked to consider the proposal for a federal territory and other possible solutions to the problems of divided jurisdiction, planning, metropolitan government, bilingualism and biculturalism in the National Capital Region.

Footnotes

¹*The Queen's Choice* (Ottawa, 1961), p. 143.

²*Confederation of Canada* (Toronto, 1872), p. 108.

³As quoted in Eggleston, p. 183.

⁴*Ibid.*

⁵National Capital Planning Service, *Plan For the National Capital: General Report* (Ottawa, 1950), p. 2.

⁶*Ibid.*, p. 3.

⁷Canada, Parliament, Joint Committee of the Senate and the House of Commons on the Federal District Commission, *Proceedings* No. 13 (June 8 and 12, 1956) p. 522.

⁸As quoted in Eggleston, p. 204.

⁹*Ibid.*, pp. 205-6.

¹⁰*Proceedings*, No. 20 (July 26 and 30, 1956), pp. 1050-51.

¹¹*Ibid.*, p. 1053.

¹²*Harold Munro v. National Capital Commission*, judgment of June 28, 1966 (Supreme Court of Canada, pp. 10, mimeo.).

¹³B. W. G. Marley-Clarke, "The Policy and Administration of the Municipal Grants Act, 1951, As Amended" (M.A. Thesis, Carleton University, 1966), Appendix.

¹⁴For such purposes as urban redevelopment (\$9.0 million), the Civic Hospital (\$2.8 million), bridges and roads (\$1.4 million), and elimination of railway crossings (\$1.5 million). See City of Ottawa, *1966 Current Expenditure Budget*, Part I, p. 3; and *Minutes of the City Council*, Feb. 28, 1966, pp. 690-1.

¹⁵*Ottawa Citizen*, July 25 and 27, 1964.

¹⁶See story by Donna Dilschneider, *Ottawa Citizen*, August 6, 1966.

¹⁷*Ottawa Citizen*, August 8, 1966.

¹⁸De Leuw, Cather, and Beauchemin-Beaton-Lapointe, *Ottawa-Hull Area Transportation Study* (1965), p. 152.

¹⁹*Statistical Review: National Capital Region*, p. 10.

²⁰*Ottawa Citizen*, August 30, 1966.

²¹As quoted in Eggleston, p. 102.

²²His column of April 28, 1966, *Ottawa Citizen*.

²³Quoted in Eggleston, p. 157.

²⁴Fred Cook, "The City of Ottawa and its Relations to the Federal Authority", Address before the Unity Club of Ottawa (March 24, 1909), p. 15.

²⁵The Federal Plan Commission of Ottawa and Hull, *Report on a General Plan for the Cities of Ottawa and Hull* (Ottawa, 1915), p. 13.

²⁶See, for example, proposal by E. Dandenault in Montreal *Le Devoir*, Feb. 18, 1965, and comment on this by *Ottawa Citizen*, Feb. 24 and 27; and editorial favouring the idea in Montreal *Star*, March 31, 1965.

²⁷*Ottawa Citizen*, Nov. 30, 1965. Dr. Marion also published an extended version in a French-American weekly, *Le Travailleur*, Oct. 21, 1965.

²⁸See stories and editorials in *Citizen*, March 5, 7, 28, 29, 1966.

²⁹Larry Smith and Company, *Economic Prospects, National Capital Region*, Ottawa, Canada, National Capital Commission, 1963, pp. 35-37.

³⁰D. C. Rowat, "Planning and Metropolitan Government," *Canadian Public Administration* (March, 1955).

³¹*Master Plan for Hull*, p. 14.

³²These figures were derived from 1961 Census of Canada, Bulletin 1.3-10, Table 123-3, by totalling those from the British Isles who speak English only and both English and French and those of French origin who speak French only and both English and French. Unfortunately, one cannot get for the total number of people whose mother tongue is English the number who speak French, except by derivation from the number who speak English only. In any case, this figure would include many whose ethnic origin was from other than the British Isles, even including some of French ethnic origin.

³³*Le Droit*, Aug. 1, 1963. On the other hand, the former mayor of Lucerne has spoken in favour of a federal territory.

³⁴Mr. McDonald told me that when he presented his brief before the Constitutional Committee in Quebec, he was sympathetically received and that his brief stimulated considerable interest and discussion.

³⁵Ottawa, Eastview and Carleton Local Government Review. *Summary of Submissions*, p. 57.

³⁶*What's New in Planning*, No. 7 (May, 1965), p. 20.

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*For an item which may be difficult to obtain, I have shown, in square brackets, in which Ottawa library it may be found. Some relevant historical references were taken from Lucien Brault's extensive bibliography on Ottawa in 24 *Revue de l'Université d'Ottawa* (1954), pp. 345-75, and I have not seen them.

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Proposals For An Ontario
Cultural and Educational
Exchange Program

Professor T. H. B. Symons

Spring, 1965

"There is an acute need for more and better communication between French- and English-speaking Canadians, and there is widespread agreement that a great deal could be done to achieve this improved communication through a program of cultural and educational exchanges sponsored by the Province of Ontario." Professor Symons' main recommendation is that the Province of Ontario ought to establish an extensive and sustained program of cultural and educational exchanges between Ontario and Quebec and within Ontario. It was Professor Symons' paper which ultimately led to the establishment of the Ontario Cultural and Educational Exchange Program.

Proposals For An Ontario Cultural and Educational Exchange Program And An Ontario-Quebec Cultural and Educational Exchange Agreement

At its meeting on 30 April, 1965, the Ontario Advisory Committee on Confederation, in its consideration of ways to foster increased mutual understanding and respect between French- and English-speaking Canadians, discussed the possibility of some positive action being taken by the Province of Ontario, perhaps in part through the Province of Ontario Council for the Arts, to promote cultural and educational exchanges between French- and English-speaking groups both within Ontario and between Ontario and Quebec. President Symons of Trent University, with the help of a research assistant, was asked to serve as a sub-committee to study this proposal and to report upon it.

The sub-committee corresponded with and consulted numerous people, seeking their views and suggestions. It also gathered and examined a considerable collection of reports, speeches, and other informative material relating to its study. (See Appendix I).

The sub-committee report follows.

The Need For A Cultural And Educational Exchange Program

There is an acute need for more and better communication between French- and English-speaking Canadians, and there is widespread agreement that a great deal could be done to achieve this improved communication through a program of cultural and educational exchanges sponsored by the Province of Ontario. Such a program, embracing the whole range of the performing and creative arts and many areas of education, would help to open up the means for a fuller dialogue between the two cultures within Ontario and between Ontario and Quebec.

A full and lively exchange program sponsored by the Province of Ontario would generate between French- and English-speaking citizens an increased understanding and appreciation of each other's cultures. It is inevitable that such a program would lead to the development of some joint cultural and educational activities and projects, and to a gradual expansion of the existing community of cultural interests which the two groups have in common. It should make a significant contribution towards informing Canadians of the great opportunities afforded to them for a shared, though diverse, cultural experience which might well be envied by other, unilingual countries.

The results of increased contact between the French- and English-speaking communities by means of this exchange program could be of the utmost importance. Much would be gained by both groups from such a program, and a nation could be lost if we fail to explore every means possible of improving the understanding and respect between Canada's French- and English-speaking peoples.

Nevertheless, while an exchange program of this kind may well contribute to better political relationships within Confederation, it should not and perhaps cannot be justified on these political grounds alone, important though they are. The main and imperative justification for an Ontario-sponsored program is that it will widen our knowledge of ourselves, of French Canadians, and of each other.

Ontario's Opportunity And Obligation

In the present time of difficulties for the Canadian Confederation, Ontario has a unique opportunity, and probably a special obligation, to serve the interests of national unity. This province is equipped to make a particular and significant contribution to an improved understanding between French- and English-speaking Canadians: by its geographical position as a neighbouring province to Quebec; by its size and population which, alone amongst the English-speaking provinces of Canada, are of the same order as those of Quebec; by its resources and wealth; by its large and growing French-speaking population; by its close and continuing historical relationship with Quebec; and perhaps by virtue of the special place which it occupies in the minds and thoughts of Quebec as the substantial partner in its marriage with English-speaking Canada.

An initiative from this province to establish a cultural and educational exchange program with Quebec and amongst its own French- and English-language communities would be a positive act showing Ontario's responsible interest in the problems and opportunities of biculturalism, and its sincere desire to contribute to their resolution.

While the idea of such an exchange program is not new, the idea of an approach to it by Ontario at the government level is. The very fact of such an approach by Ontario could have a considerable impact in Quebec—an impact which would in itself make a contribution to the dialogue between French- and English-speaking Canadians.

The Scope For A Cultural And Educational Exchange Program

An extensive and sustained cultural and educational exchange program between Ontario and Quebec and between the two language groups within Ontario would provide a host of opportunities to bring French- and English-speaking Canadians closer together and to build a greater understanding and appreciation between their two cultures.

Some of the possibilities of a cultural exchange program in drama, music, the visual arts, literature, other arts, and the popular media, and of an educational exchange program including student and teacher exchanges in almost every field, are suggested in Appendix II of this Report. However, these suggestions are intended only to illustrate something of the possible scope of the program. It would, of course, be one of the early and continuing functions of those responsible for administering the program to plan more specifically for these and other activities.

The Cultural Quadrilateral Of Ontario And Quebec

A cultural and educational exchange program should certainly give recognition and careful consideration to the important roles of the French- and English-speaking minorities in Ontario and Quebec respectively. In effect, the two provinces now constitute a cultural quadrilateral, in which the large and growing French-speaking minority of Ontario and the large and long-established English-speaking minority in Quebec make up, with the English-speaking majority of Ontario and the French-speaking majority of Quebec, the four points of the compass. This quadrilateral offers natural opportunities for a valuable four-way exchange program which should work within each of the two provinces as well as between them.

The scope within each province for cultural exchanges between the French- and English-speaking groups has as yet been little recognized. It provides an opportunity which should not be overlooked. Ontario has a responsibility to its own citizens to assist them to know themselves and their diverse culture better.

The development of an organized and sustained exchange program between Ontario and Quebec could be so planned and arranged that it would help to foster improved relationships and an increasing cultural communication between the two language groups within each province as well as between the two provinces. It should be possible for Ontario and Quebec to work with one another to advantage in conceiving and implementing a program which would nourish education and the arts amongst their respective French- and English-speaking minorities.

Multiculturalism And The Exchange Program

A program of cultural exchanges should also reflect to an appropriate extent the multicultural character of Ontario's population. For example, and to mention but one or two illustrations of this point, some exchanges both within Ontario and between Ontario and Quebec might give particular attention to the music and folk-arts of the large Ukrainian community centred in Sudbury, or to the culture of the large and long-established German community of southwestern Ontario. Special exhibits and events might well be included in the program of exchanges with Quebec which would illustrate to that province the important multicultural heritage of Ontario.

Government Participation In The Cultural And Educational Exchange Program

Experience with the modest number of cultural and educational interchanges and tours which have taken place to date between Ontario and Quebec has made very clear the critical importance of proper preparation, organization and sponsorship. There have been several recent examples of visits to Ontario by performers from Quebec, and vice versa, which were much less successful than they might have been, because of poor preparation, lack of organization, and inadequate publicity. This situation has often led to difficulties and misunderstandings which have occasionally outweighed the benefits of the visit.

Some substantial measure of government participation through an appropriate agency is needed to give continuing sponsorship and support to any extensive cultural and educational exchange program. Government participation should also be helpful in arousing public interest and confidence in the program, and in establishing an acceptably high standard for its activities.

The Province of Ontario Council For the Arts

The Province of Ontario Council for the Arts, which was established in 1963 "to promote the study and enjoyment of and the production of works in the arts" including "theatre, literature, music, painting, sculpture, architecture or the graphic arts," and "any other similar creative or interpretative activity," has already made a notable contribution to the cultural life of the province. Since its establishment, the Arts Council has developed a significant program of encouragement and support for the arts within Ontario, and the nucleus of a capable staff and administrative organization to conduct its activities.

The cultural aspects of the proposed cultural and educational exchange program both with Quebec and between the diverse cultural groups within Ontario would relate closely and naturally to the purposes and program of the Ontario Arts Council and might perhaps be conducted under its auspices. To this end the scope of the Ontario Arts Council might be broadened to embrace, in addition to its responsibility for the promotion of the arts in Ontario, a wider concept of service to national unity through an improved knowledge and understanding of the bicultural and multicultural heritage of our province and country. This could be achieved by extending the activities of the Ontario Arts Council to include a program of planned cultural exchanges which would bring artists and the arts from beyond the province to the people of Ontario and would provide opportunities to take Ontario arts and artists to people outside the province. Similarly, within Ontario, the Arts Council could sponsor a parallel and related program of exchanges in the arts between the different cultural communities of the province.

Such a program need not inhibit in any way the present objectives of the Ontario Arts Council of service to the arts in Ontario, nor entail any lessening in the Council's concern for good artistic standards, and certainly should not be allowed to do so. On the contrary, it should enhance and strengthen the present program of the Ontario Arts Council by bringing fresh support to it, and by helping to quicken and enrich the cultural life of Ontario and of the nation of which it forms a part.

Although some aspects of the proposed Ontario Cultural and Educational Exchange Program might be placed naturally under the *aegis* of the Ontario Arts Council, the Exchange Program would require a Director, staff and budget of its own to plan and to carry out its particular program of activities. While the Exchange Program could possibly be constituted as a section or division of the Ontario Arts Council, reporting to the Council and working under its general supervision and direction, it would on balance probably be better for the Ontario Cultural and Educational Exchange Program to be established as a separate agency, working closely with the Ontario Arts Council, but reporting directly to the Minister of Education or his Deputy.

A preliminary costing of some of the desirable activities of an Ontario Cultural and Educational Exchange Program, and the experience of similar programs elsewhere, indicates that a budget, initially, of \$300,000 annually would be required to establish the Program on a solid footing.

The allocation of funds to the Ontario Cultural and Educational Exchange Program should be quite separate from and in addition to the monies granted annually to the Ontario Arts Council for its present program of support for the arts in Ontario. The development of the Exchange Program should not impinge in any way upon the resources placed at the disposal of the Ontario Arts Council to finance its very worthwhile current activities.

Privately Sponsored Cultural And Educational Exchanges

Cultural and educational exchanges and related projects by private bodies such as municipalities, business corporations, schools, universities, libraries, clubs, and service organizations, and by interested private citizens should be encouraged. There is already a considerable amount of private interest and activity in this field which might be fostered and assisted by the example, the administrative machinery, and the financial help of an official provincial program. The formal organization of a provincial program could be helpful in many ways in forwarding the independent exchanges organized by private agencies. The experience and information which would be acquired by those engaged full-time in the provincial program could often be of assistance to independent activities, as would be the facilities and connections developed by the government program.

The important role of privately arranged cultural and educational exchanges needs to be stressed; this role should not be reduced but should

be enlarged by the establishment of a government program. Often a very modest amount of financial help, counsel and encouragement, forthcoming from the province, would make the difference between success and failure of a privately arranged project.

There are a great many possibilities for a lively and widespread program of privately sponsored cultural and educational activities. Several business firms are already sponsoring some activities of this sort and more might be interested in doing so. This is also true of many clubs and voluntary service organizations. At the municipal level, the idea of twinning cities and towns in the two provinces of Quebec and Ontario offers manifold opportunities for exchanges and for increased contact between the two cultures. These ideas and other independent programs, supported by some assistance and leadership from the provincial government through its own program, could make a most important contribution to provincial and national unity by promoting cultural and educational activities, and citizen exchanges, within the Ontario-Quebec cultural quadrilateral.

Indeed, it is desirable as soon as possible to investigate the possibilities of a widespread program of citizen exchange, reaching well beyond the strict definitions of an educational or cultural exchange program. Interested communities and individuals, private organizations and corporations, might be particularly valuable in the development of a program of citizen exchange.

Quebec Interest In An Ontario-Quebec Cultural And Educational Exchange Program

Informal discussions with interested individuals and officials suggest that Quebec would be very interested in exploring with Ontario the possibilities of an interprovincial cultural and educational exchange program and in strengthening cultural ties with the other provinces and between French- and English-speaking Canadians.

There is some feeling in Quebec that exchanges organized by the federal government may sometimes be too cumbersome and remote, and that it would be preferable to make arrangements directly between interested provinces. It may be that suggestions from the federal government are not likely to produce an entirely favourable reaction in Quebec. Indeed, they may be regarded with suspicion because of Quebec's desire to preserve and assert her autonomous position in her relationships with Ottawa, and her constitutional authority in the field of education.

By contrast, however, there are indications that the Quebec Government and many interested citizens and groups in Quebec might react favourably and even enthusiastically to invitations from other provinces to improve communications between French- and English-speaking Canadians. Indeed, the Quebec Ministry of Cultural Affairs has already given evidence of its interest through the activities of its Extra-Territorial Service. A program by Ontario would be very natural and might be par-

ticularly welcomed and appreciated. There would seem to be every reason that a cultural and educational exchange program between Ontario and Quebec would be entirely welcome and acceptable to the Province of Quebec.

Procedure And Form For An Ontario-Quebec Cultural And Educational Exchange Agreement

It would be appropriate for the initial approach to the Quebec Government for a cultural and educational exchange agreement to be made at the highest level, and it is desirable that this official approach be made as soon as possible.

The implications of the form and procedure of an agreement between the two provinces for an exchange program should receive careful study. A signed agreement in the form of an *entente* or cultural accord might provide a framework within which further discussion and specific negotiations could take place. This accord might:

- (a) constitute a broad agreement between Ontario and Quebec to initiate and work together upon a reciprocal program of cultural and educational exchanges;
- (b) include specific provision for establishing a joint Ontario-Quebec Committee on which the bodies entrusted by each province with the responsibility for conducting its exchange program would be represented. This joint committee could act as a consultative body, and serve as a sounding board for ideas, and a clearing house for the various projects;
- (c) provide for the establishment, when appropriate, of a number of other joint working committees to deal with specific matters.

The signing of such an agreement or accord between the two provinces would lend weight and significance to the exchange program and would give to it an enhanced initial impact as well as widespread publicity. This procedure has in general been followed by Quebec in recent cultural agreements with France and Louisiana and is one that may be preferred by that province. Such an agreement would provide an example of interprovincial cultural co-operation that would encourage similar interest and activity in other provinces and amongst private organizations and citizens.

Possible alternatives to a signed accord would be an informal and unwritten agreement, or perhaps an exchange of letters, or of public statements, which would make clear the wish of the two provinces to seek increased co-operation and interchange in cultural and educational matters.

Once an agreement had been reached between the two governments, there would be great scope for consultation and co-operation between Ontario and Quebec for cultural and educational exchanges. No doubt a number of joint committees and of specific co-projects would emerge. However, it would be desirable for each province to conduct and main-

tain its own program with its own budget and administration rather than to attempt to establish a single committee and a common purse for one operation which might become unwieldy and which might lead to conflicts and difficulties.

Recommendations

With the foregoing information and considerations in mind, the sub-committee earnestly recommends:

1. That immediate consideration be given by the Province of Ontario to the establishment of an extensive and sustained program of cultural and educational exchanges, both between Ontario and Quebec and within Ontario between its French- and English-speaking peoples. This program should reflect the multicultural character of the Province of Ontario;
2. That to this end provision should be made for the establishment of an Ontario Cultural and Educational Exchange Program and for the appointment of a Director of this Program who would report directly to the Minister or his Deputy;
3. That an approach should be made to the Province of Quebec as soon as possible, and at the highest level, to explore the possibilities of an agreement to establish a cultural and educational exchange program between Ontario and Quebec;
4. That the possibility of similar cultural and educational exchange agreements with other provinces, or groups of provinces, be explored when the Ontario Cultural and Educational Exchange Program has been established.

Appendix I

A. The sub-committee corresponded with and consulted numerous people, seeking their views and gathering suggestions and informative material about a possible cultural exchange program between Ontario and Quebec and between the cultural groups within Ontario. In addition to correspondence and informal discussions with a large number of people, the sub-committee arranged meetings with the following persons:

- M. Guy Beaulne, Director, Theatre Service, Quebec Ministry of Cultural Affairs;
- Mr. Paul Bennett, Director, Art Institute of Ontario;
- M. Gilles Bergeron, Assistant Deputy Minister, Department of Education of Quebec;
- M. Jean Boucher, Director, Canada Council;
- Mr. Milton S. Carman, Executive Director, Province of Ontario Council for the Arts;
- M. Georges-Henri Dagneau, Director, Extra-territorial Service, Quebec Ministry of Cultural Affairs;
- Hon. William G. Davis, Minister of Education and Minister of University Affairs, Province of Ontario;
- Mr. Peter Dwyer, Assistant Director (Arts), Canada Council;
- Dr. Eugene A. Forsey, Director of Research, Canadian Labour Congress; Member, Ontario Advisory Committee on Confederation;
- M. Guy Frégault, Deputy Minister of Cultural Affairs, Province of Quebec;
- Mr. Arthur Gelber, President, Canadian Conference of the Arts; Member, Province of Ontario Council for the Arts;

Father André Girouard, Faculty, University of Sudbury;
 Mr. Nicholas Goldschmidt, former Artistic and Managing Director of the Vancouver International Festival; Senior Performing Art Project Officer, The Canadian Centennial Commission;
 M. Pierre de Grandpré, General Director, Arts and Letters, Quebec Ministry of Cultural Affairs;
 Father Laurent Larouche, Faculty, University of Sudbury;
 M. Richard Leclercq, Faculty, University of Sudbury;
 Rev. Dr. Lucien Matte, President, University of Sudbury; Member, Ontario Advisory Committee on Confederation;
 Mr. Eric McLean, Music Critic, *Montreal Star*; Member, Montreal Arts Council; Member, Province of Quebec Arts Council;
 Mr. George Merten, Adviser for Community Theatre, Music, and Puppetry, Community Programs Branch, Ontario Department of Education;
 M. Claude Morin, Deputy Minister of Federal-Provincial Affairs, Province of Quebec;
 Mr. J. A. Norman, Manager, Advertising and Public Information Department, Sun Life Assurance Company of Canada;
 M. Claude Ryan, Director, *Le Devoir*, Montreal;
 M. Roger Séguin, Member, Ontario Advisory Committee on Confederation; past Member, Province of Ontario Council for the Arts; President, L'Association canadienne-française d'Éducation d'Ontario;
 Mr. Scott Symons, Curator, Sigmund Samuel Canadiana Gallery, Royal Ontario Museum;
 M. Arthur Tremblay, Deputy Minister of Education, Province of Quebec;
 Mr. Herbert Whittaker, Theatre Critic, *Toronto Globe and Mail*;
 Mr. Henry Wrong, Director, National Clearing House, The Canadian Centennial Commission.

B. Reports, speeches, and other informative material were gathered from the following organizations and agencies:

Art Institute of Ontario
 L'Association canadienne-française d'Éducation d'Ontario
 Banff Centre for Continuing Education, National Conference on the Problems of Canadian Unity (June 22 to 24, 1964)
 Board of Education for the City of Welland
 Canada Council
 Canadian Book Publishers' Council
 Canadian Broadcasting Corporation
 Canadian Centenary Commission
 Canadian Centenary Council
 Canadian Chamber of Commerce
 Canadian Conference of the Arts
 Canadian Institute of Chartered Accountants
 Community Programs Branch of the Department of Education, Province of Ontario
 Department of French, University of Toronto
Le Devoir, Montreal
 The Journal of Canadian Studies, Trent University, Peterborough
 Ministère de l'Éducation Nationale, France
 Ministère de l'Éducation, Province de Québec
 Ministère des Affaires Culturelles, Province de Québec
 Ministry of Education, Province of Ontario
 National Theatre School
 L'Office franco-allemand pour la Jeunesse
 Province of Ontario Council for the Arts
 Sigmund Samuel Canadiana Gallery, Royal Ontario Museum
 Sociétés canadiennes-françaises de la Région Métropolitaine de Windsor
 United Church of Canada
 University of Sudbury
 University of Toronto Press
 Publications and material from the Progressive Conservative, Liberal, and New Democratic Parties of Ontario.

C. The sub-committee wishes to record its gratitude to its Research Assistant, Mr. Modris Eksteins.

Appendix II

Some suggestions for consideration by the Ontario Cultural and Educational Exchange Program

Education:

- increased student and teacher exchanges at all levels of education and in almost every field;

Schools

- development of school library and language laboratory resources;
- increased emphasis upon the French language and the spoken tongue in schools;
- increased recruitment of French teachers from the Province of Quebec;
- sponsorship of a special program of Teaching Assistants, drawing recent graduates from Quebec universities to assist with French instruction in Ontario schools;
- tours and exhibits designed for the schools;
- tours of the schools by performing artists;
- special programs planned within the schools, of linguistic and bicultural interest: for example, in art; music; debating; library; school magazine or paper; literary society activities; mock parliament; language and bicultural clubs;

Universities

- more emphasis on appropriate Canadian studies, including support for study and research in Canadian literature and the arts;
- support for the development of special French-Canadian collections in university libraries in Ontario;
- sponsorship of exchange visits between professors of French- and English-language universities;
- collaboration on teaching projects such as joint seminars on particular areas of literature, art, and history;
- collaboration on research projects between French- and English-language universities;
- sponsorship of a program of Teaching Assistants, drawing recent graduates from French-language Quebec universities to assist with French instruction and Canadian Studies programs at Ontario universities;
- appointment of French-speaking resident artists or research scholars to English language universities, and vice versa;
- award of a number of Ontario Graduate Scholarships to students from Quebec;
- establishment of a number of undergraduate scholarships for French-speaking students at English language universities and other appropriate educational institutions, and vice versa;

- encouragement of student travel to, and summer employment in, Quebec or a culturally different part of Ontario;
- encouragement of bilingual conferences on education and on the arts;
- support for publications by the universities relating to biculturalism;
- support for scholarly translation work within the universities;
- assistance with appropriate developments in university extension programs and in university community education projects;
- support for the development of university summer programs in the French language and French-Canadian culture and society;
- developments within the regular academic programs of universities in regard to curriculum and language teaching;
- emphasis in cultural and extra-curricular activities: films, lectures, outings, exchanges, drama, art, music.

Drama:

- direct exchanges between professional theatre groups in Ontario and Quebec: for example, between Le Théâtre du Nouveau Monde of Montreal and an Ontario theatre company which might arrange to exchange their productions for a week during or at the end of each season;
- encouragement of tours by theatre groups from each province in the other: for example, by groups such as Les Jeunes Comédiens and the Crest Hour Company;
- visits by and exchanges between theatre groups of the universities and schools in the two provinces;
- arrangement of bicultural conferences and study groups in the technical and administrative aspects of theatre such as stage management, production, and theatrical design;
- student and teacher exchanges in drama;
- support for the further development of French-Canadian theatre groups in Ontario;
- encouragement of the writing and presentation of dramatic works about Ontario and by Ontario writers which could play an important role in interpreting the province both to itself and to others;
- assistance toward the translation of some dramatic works into French or into English for presentation to audiences of the other language group;
- preparation of synopses for program notes to accompany the presentation of dramatic works in their original tongue.

Music:

- assistance for the preparation and musical arrangement of a collection of Ontario songs and music for presentation before both French- and English-speaking audiences;
- the preparation of a collection of French-Canadian songs for circulation in Ontario;
- commissioning of original musical works;
- invitations to outstanding performers to visit, or to represent, the Province of Ontario as guest artists;

- tours and exchanges of folk-singers and *chansonniers*;
- attention to the possibilities of recorded music; for example, assistance for the recording and distribution of the work of outstanding performing artists and groups in Ontario; and the circulation in Ontario of recordings of outstanding musical artists from Quebec.
- annual exchange between the Toronto and Montreal Symphony Orchestras;
- similar exchanges between the chamber groups and smaller symphony orchestras of the two provinces;
- tours by musical groups;
- tours and exchanges between choral groups; for example, the Toronto Festival Singers and the Mendelssohn Choir from Ontario.

Visual Arts:

- support to enable the Art Institute of Ontario to enlarge and extend its program to include more exhibits from Quebec, and to arrange exhibits of the visual arts of Ontario for tour in Quebec;
- exchange of exhibits of painting and sculpture between public galleries in the two provinces;
- assistance to enable touring of exhibits throughout both provinces;
- arrangement of exhibits in provincial and municipal government buildings;
- arrangements for bilingual lecturers to accompany touring exhibits of the visual arts;
- exhibits of the folk-arts and crafts of Quebec in Ontario and of Ontario crafts in Quebec;
- exchange of art teachers and students; for example, between the Ontario College of Art and the Ecole des Beaux-Arts of Montreal.

Literature:

- assistance for the translation of appropriate works from English to French, and vice versa;
- assistance for the publication of appropriate works of bicultural interest and concern;
- encouragement of increased attention to the study of Canadian literature in schools and universities;
- support for research in Canadian literature in Ontario;
- tours and exchanges of literary speakers between the provinces and within Ontario; novelists, poets, playwrights, critics;
- sponsorship of conferences and literary study groups and workshops;
- commissioning works to portray and interpret the character and the history of the province;
- exchanges between schools and universities of literary study groups and lecturers;
- support for the appointment of resident poets and writers from Quebec to Ontario universities;

—collaboration on literary projects of common interest, of which the Dictionary of Canadian Biography/Dictionnaire Biographique du Canada is an outstanding example;

—a joint literary competition in appropriate categories sponsored by the two provinces.

Some Other Arts and Related Fields:

—exchanges, tours, conferences, including opera and ballet;

—a wider introduction of such French-Canadian song and dance companies as Les Feux Follets to Ontario audiences;

—exchanges, tours, conferences, speakers, from the smaller ethnic minorities; displaying something of their rich cultural heritages in diverse branches of the arts;

—touring of Quebec's famous puppetry artists in Ontario and of Ontario puppetry theatre artists and groups in Quebec;

—exchanges and tours in the field of children's entertainment;

—exchanges, tours, and joint projects in cinema; wider circulation of French-language films in Ontario; appropriate assistance for the native film industry and for the preparation of some specific films of particular provincial or bicultural interest;

—museums: exchanges and tours of exhibits and special collections; exchanges and conferences of administrative and curatorial staff members.

Press, Radio, and Television:

—extend and improve the resources for popular commentary upon bicultural matters;

—support for study exchanges between French- and English-speaking reporting and editorial staff both between the two provinces and within Ontario;

—arrangements and support for Ontario writers and radio and television commentators to make periodic or regular reports on developments and activities in the arts, education, and public affairs in Quebec;

—the diffusion of general information about the exchange program and the stimulation of public interest and participation in it;

—the presentation of specific events in the exchange program;

—advertising and reporting specific events in the exchange program;

—provision of more and better information in Ontario via these media about education and the state of the arts and cultural affairs in both Ontario and Quebec, and the diffusion of more information of general bicultural interest.

Report on an Ontario Position
in Federal-Provincial
Financial Relations

*The Economic and Fiscal
Sub-Committee of the Ontario Advisory
Committee on Confederation*

April 24, 1966

With the approach of the quinquennial negotiation of federal-provincial financial arrangements, the government asked the Committee to make recommendations as to the stand that the Ontario Government should take on federal-provincial tax-sharing and cost-sharing arrangements and equalization payments.

Report on an Ontario Position in Federal-Provincial Financial Relations

Historical Development

Since 1947, federal-provincial financial relations have been conducted within the framework of five-year fiscal agreements. Normally, these agreements have been arrived at after a series of meetings between officials, followed by formal decisions being made at federal-provincial conferences of premiers and prime ministers. At these conferences, the various provinces make known their positions on such matters as tax sharing and equalization payments, and at the end of the conferences the federal government comes forth with a formula for the next five years which purportedly takes into account the circumstances of the individual provinces.

In 1955, with the establishment of the Continuing Committee on Federal-Provincial Fiscal and Economic Relations, a means for permanent consultation among senior civil service officials came into being. This Committee was responsible for much of the background work prior to the 1957 and the 1962 agreements. The latest agreement, which was to run from April 1, 1962, to March 31, 1967, was changed in 1963 during its term, to provide for a different equalization formula and a higher proportion of revenue from succession duties for the provinces. Also the annual increment in percentage of personal income tax revenue accruing to the provinces was raised after the commencement of the last agreement.

Following this change in the form of the 1962-67 federal-provincial agreement, the federal government proposed the establishment of the Tax Structure Committee which would be charged with a review of the bases for the fiscal relationships between the two levels of government and, more particularly, to develop the framework of a new five-year agreement to cover the period 1967 to 1972. The Tax Structure Committee was expected to make a careful study of the recommendations and research reports of the federal Royal Commission on Taxation and the various committees and commissions established by several of the provincial governments to look into provincial tax structures. The Committee was asked to include in its general review a wider range of topics than had previously been discussed in the Continuing Committee or embodied in previous tax-sharing agreements; the subjects included the future of cost-sharing programs and the procedure known as opting out, and the establishment of a permanent liaison which might be used to co-ordinate the fiscal policies of federal and provincial governments. The Tax Structure

Committee was asked to make its final report to the federal-provincial conference of premiers and prime ministers in 1966 so that final agreement could be reached, budgets prepared and legislation passed prior to the coming into effect of a new agreement on April 1, 1967.

Current Status

The Tax Structure Committee had its first meeting in the autumn of 1964 and asked the Continuing Committee on Fiscal and Economic Matters, with an expanded membership as governments thought appropriate, to act as its research and secretariat body. This meeting in the autumn of 1964 established a suggested timetable of study and made some rough allocations of responsibilities among the governments for undertaking particular studies.

During 1965, the Continuing Committee and the Tax Structure Committee devoted most of their time to the preparation of projections of expenditure and revenue of the various governments, on the basis of agreed assumptions of economic conditions. These were completed in the autumn and presented formally to the Tax Structure Committee in December. They showed a very large and growing deficit appearing for each of the provinces at existing tax rates and a growing but smaller proportionate deficit for the federal government.

Meanwhile, various provinces had made strong statements about the requirements for greater revenue sources in order to meet their constitutional responsibilities. At one extreme, the federal government could insist that the provinces find their own income. More reasonably, three broad alternatives are available:

- shared-cost programs;
- block grants;
- greater taxing capacity in various fields.

The problem for Ontario is to suggest the devices, or mixture of devices, which will preserve effective federal economic and fiscal capacity and at the same time provide more adequately for provincial requirements.

The second stage in the work of the Tax Structure Committee was to have been an intensive study of the reports of the various commissions and committees on taxation. This was to have been done during the summer and autumn of 1965 on the assumption that these reports would be available by the summer of 1966. By the end of 1965, commissions had reported in New Brunswick, Saskatchewan, Manitoba, and Quebec, with the federal Royal Commission not expected to report until May, 1966, and the Smith Committee on Taxation in Ontario not expected to report until September, 1966. The appropriate federal government civil servants were given, on a confidential basis, copies of research reports and draft chapters of the Carter Commission report, but it is probable that Ontario civil servants will not receive much in the way of recommendations of the Smith Committee for several months.

The Continuing Committee on Fiscal and Economic Matters has been

obliged to begin its discussion of the substantive issues of tax sharing, equalization formulae, and the future of cost-sharing programs without the benefit of the tax committee studies. The Institute of Intergovernmental Relations at Queen's University has been requested to make a study of the matter of intergovernmental liaison and will not be reporting until the summer of 1967, thus postponing final decisions in this area.

In the field of equalization, the federal government has prepared two background reports setting out the main principles which have to be dealt with in discussing equalization formulae and studying in some detail two alternative methods of arriving at formulae—the tax indicator approach¹, and the total income approach². Individual provinces are expected to prepare their own papers and also to apply these alternative approaches to their own positions.

On tax sharing little has been discussed yet, since any definite proposals will have to be tied in very closely with royal commission discussions. Each individual government is expected to develop its own proposals.

On the future of cost-sharing programs, informal discussions have been held with federal government officials and several alternative approaches have been investigated. The federal government's approach to medicare is a new one. In general, it means leaving the choice of acceptance to a province with the understanding that, at the end of a fixed period following the introduction of the shared-cost program (3 years is suggested), the province will become fully responsible and will be given the equivalent of its former federal grant by way of tax abatement or an unconditional grant. Further details are given in Appendix 1.

These three areas in which decisions have to be taken in the Tax Structure Committee—tax sharing, equalization payments and shared-cost programs—will be discussed in more detail later. At this point, it should be emphasized only that unless there is a delay in the coming into effect of the new five-year agreement, the work of the civil service groups will have to be finished by early summer and final decisions taken by the Tax Structure Committee in the autumn of the present year.

The Approach To A Policy

The balance of this report is devoted to developing a course that might be followed by Ontario in the forthcoming negotiations. The various major issues and objectives have been viewed as being both economic and non-economic. The main concern of this report is to give some indication of the solution that would result from following purely economic considerations, and an appreciation that economic costs are incurred when other objectives are pursued. It is not the intention to imply that the non-economic objectives are of a lower order of importance; only that their realization does in some instances lead to an economic cost.

Non-economic Objectives

Even a short list of some of the more familiar objectives of Canadian confederation will indicate that many of these objectives are non-economic

in character. Perhaps of primary importance is the establishment and maintenance of national independence. Of secondary importance is recognition of the special social and cultural aspirations of French Canada. Others include: the creation of conditions of relative stability of population among the regions; relative equality of at least minimum standards of service between provinces; equitable treatment among the provinces in the redistribution of national income; and all governments as far as possible to have independent revenue sources and independent spheres of responsibility. Other objectives that are primarily non-economic will occur to the Advisory Committee, many representing fundamental ideas in the Canadian concept of nationhood.

Economic Objectives

Some of the original economic objectives are as valid today as in 1867; in particular, the creation of a common market in British North America by the removal of interprovincial trade barriers, the adoption of a uniform national tariff, and the creation of new internal means of transportation are still active ingredients of government policy. In latter-day economic parlance, however, the new objectives are likely to be stated in terms of "economic stability" and "economic growth".

"Economic stability" is most easily translated as the maintenance of reasonably full use of the existing capacity to produce without creating inflationary price increases. In terms of unemployment, it implies the attainment of an Ontario rate of perhaps 2 per cent and national average rate of 3 per cent to 4 per cent; in terms of prices, it implies a rise of $1\frac{1}{2}$ per cent to 2 per cent per annum. Stability is thought to be best achieved by a high aggregate demand for currently produced goods and services, fostered by monetary and fiscal policies and in particular, where necessary, by elimination of fiscal drag (the surplus that most tax structures would produce if the economy were operating at full capacity).

"Economic growth" means the long-range objective of achieving an increased ability to produce—i.e., a rising per capita output of goods and services; not simply of maintaining economic activity at the existing capacity, but of increasing the capacity itself. This means making the economy more efficient and productive in all its aspects by improving the productivity of resources through research, education, training, capital investment, etc., and the use of all these resources in the most productive way. It is generally thought that the greater the degree of mobility of labour, capital and goods within the country the greater is the likelihood that they will find their maximum usefulness—i.e., will make their greatest contribution to economic growth.

Conflicts Between Objectives

It will be fully apparent that conflicts exist between the non-economic objectives and the economic goals of stability and growth. The maintenance of minimum standards of services in all areas of Canada may contribute to an immobility of population that is contrary to desired growth;

the achievement of higher standards of education, and the training and mobility of labour may result in the depopulation of the less advanced regions of the country; the redistribution of income from the wealthier to the poorer provinces may disperse capital from regions where it could most productively be invested, at a permanent cost in lost economic growth for the whole country; taking fiscal authority away from the national government in response to demands for greater provincial fiscal autonomy may weaken fiscal power until it is no longer of use as a national economic support.

These and other conflicts are the inescapable price of a federal system of government. Because the Canadian federation is as much a political and social body as an economic one, all these requirements must be met as best they can by compromise. The economist makes his main contribution by pointing out that there is an economic cost in attempting to satisfy the broader range of objectives.

Specific Demonstrations Of The Compromise Of Objectives

Economic Efficiency v. Equity Through Redistribution

It would aid greatly in evaluating the economic cost of the present arrangement if adequate figures were available to measure the extent to which the interregional flow of private capital within the economy is offset by the flow of government funds. Unfortunately, the figures are very tentative and no great reliance can be placed on them. However, simply to demonstrate in quantitative terms the commonly accepted view that the federal system of finance disperses funds away from the growth areas that attract private capital, an attempt has been made to compare two sets of figures in Appendix 2. The first gives an indication of the net flow of private capital into or out of each Canadian province, and the second, the net balance of federal revenues and expenditures for each province. The figures in Appendix 3 may (or may not) reflect the consequence of these flows.

The figures show the not very surprising result that the two streams of funds are in opposite directions. Unfortunately, the figures are not capable of supporting any further conclusions than this fairly self-evident one. It cannot be said that the flow of private capital necessarily identifies economic growth areas, or that the flow of government funds is without an economic reason. The results are of interest mainly as evidence of the sort of comparison that would be necessary if measurements of the economic cost of federal financial measures are ever to be assessed.

Fiscal Autonomy v. Centralized Fiscal Authority

Over the past three decades, as the result of the depression, World War II, and economic policies followed since 1946 by the federal government, there has been considerable centralization of revenue and expenditure from the municipal to the provincial and federal levels. At the provincial level, the centralization has been fairly well-balanced between revenue and expenditure on own account. At the federal level, the

result has been that revenue has far exceeded expenditure on own account. The centralization of revenue on own account at the federal level (compared to expenditures) has been matched by the fact that the municipalities have suffered a greater relative decline in revenue than in expenditure on own account. By 1964 these trends led to the situation described in the following paragraph.

In 1964, the federal government had a surplus of \$1,582 million on its own account while the municipalities had a deficit of \$1,750 million, and the provinces on their own account had a surplus of \$148 million. The federal government transferred \$1,198 million to the provinces, and the provinces transferred \$1,261 million to the municipalities. After these and some other net transfers, the municipalities ended up with a deficit of \$452 million, while the provincial surplus was reduced to \$104 million and the federal to \$328 million.³ This information is put in clearer perspective in Tables I to III. Furthermore, Table I provides a measure of the relative importance of intergovernmental transfers.

Table I
Government Revenue and Transfer Payments,
National Accounts Basis, 1964
(Millions of Dollars)

	Federal Gov't.	Provincial Gov'ts.	Municipal Gov'ts.
Own Account Revenues:			
Direct Taxes—Persons	2,558	816	33
Direct Taxes—Corporations	1,482	507	—
Withholding Taxes	140	—	—
Indirect Taxes	2,847	1,944	1,857
Investment Income	547	621	351
Contributions to Social Insurance and government pension funds	558	298	36
	<u>8,132</u>	<u>4,186</u>	<u>2,277</u>
Transfers:			
From Federal Government	—	1,198*	56
From Provincial Governments	—	—	1,261
From Municipal Governments	—	19	—
Total Revenue, including transfers	<u>8,132</u>	<u>5,403</u>	<u>3,594</u>
Federal Transfers as % of Total Revenue	—	22.2	1.6
Provincial Transfers as % of Total Revenue	—	—	35.1

*See Table III

Source: Canada, D.B.S., *National Accounts, Income and Expenditure*, 1964.

Table II
Government Revenue, Expenditure and Intergovernmental
Transfers, 1964
(Millions of Dollars)

	Federal Gov't.	Provincial Gov'ts.	Municipal Gov'ts.
Total Own Account Revenue	8,132	4,186	2,277
Total Own Account Expenditure	6,550	4,038	4,027
Surplus, Deficit on Own Account	<u>+ 1,582</u>	<u>+ 148</u>	<u>- 1,750</u>
Total Revenue, including transfers	8,132	5,403	3,594
Total Expenditure	7,804	5,299	4,046
Surplus, Deficit, after transfers	<u>+ 328</u>	<u>+ 104</u>	<u>- 452</u>

Table III
Federal Transfer Payments To The Provinces, 1964*
(Millions of Dollars)

Old age and blind persons	49
Disabled person allowances	23
Statutory grants	24
Taxation agreement	283
Health grants	53
Trans-Canada highway	57
Hospital insurance and Diagnostic Services Act	415
Unemployment assistance	114
Technical and vocational training	90
Other	90
Total	<u>1,198</u>

*Includes not only shared-cost contributions, but also transfers under the Taxation Agreements, and statutory grants. All of these have been calculated on a calendar year basis.

Source: Canada, D.B.S., *National Accounts, Income and Expenditure*, 1964.

Our Basic Postulates

The following postulates have been made by the sub-committee in their consideration of specific fiscal arrangements for the future:

- 1) the continuing need for the retention of effective fiscal power by the federal government, in order that such powers be available to promote stability, growth and other national economic objectives;

- 2) increasingly close co-operation between the federal and provincial governments in fiscal and economic matters;
- 3) the allocation of sufficient tax revenues to the provinces to fulfil their constitutional obligations.

As a general overriding condition, we assume that for the foreseeable future the greater pressure for revenues will be on the provinces and municipalities, and that if any surplus tax resources are available it will be at the level of the federal government.

The Basic Elements

The present system of federal-provincial financial relations embodies three main techniques:

- 1) tax sharing;
- 2) equalization grants;
- 3) shared-cost programs and opting out.

We examine these three main elements in the following pages from the standpoint of the postulates set forth. Proposals are set forth in each area which are intended to suggest the general line of approach we would recommend for Ontario rather than to present a rigid or complete prescription for all eventualities. We realize that much of the final settlement of new arrangements will be a matter of negotiation.

Tax Sharing

At the present time, the federal government collects revenue in three direct tax fields which it shares with the provinces:

- 1) personal income;
- 2) corporate income;
- 3) estates and inheritances.

Personal Income Tax

While Quebec collects its own personal income taxes, applying a different set of graduated rates of tax and exemptions, the federal government collects this tax for the remaining provinces. It abates to the provincial government an agreed proportion of its tax collected from each taxpayer residing in the province (24 per cent in 1966), and collects any levy the province may decide to impose, above the agreed proportion. Manitoba and Saskatchewan have imposed levies above the standard abatement.

Corporate Income Tax

All provinces and the federal government have agreed on definitions regarding corporate taxable income. For determining the provincial distribution of taxable income, the major agreement is that:

- a) 50 per cent of a firm's taxable income will be distributed according to the provincial distribution of the firm's salaries and wages; and
- b) 50 per cent will be distributed according to the revenue from sales by the plants in the various provinces in which the firm has plants.

The federal government applies its own corporate tax rate and abates to the provinces a standard rate of 9 per cent on the taxable income, except that an additional 1 per cent abatement is given to Quebec in lieu of university grants. Ontario and Quebec collect their own taxes and impose a levy above the 9 per cent standard provincial rate, and Manitoba and Saskatchewan have levied an addition 1 per cent which the federal government collects for them.

Estates and Inheritance Taxes

Quebec, Ontario and British Columbia levy and themselves collect a succession duty, as well as receiving a 25 per cent share of the federal estates tax. The remaining provinces receive 75 per cent of the federal estates tax collected in their respective jurisdictions.

Provincial Sharing of Direct Taxes

As we have seen, the direct taxes now being shared are the personal income tax, the corporation income tax and the estates and inheritance taxes. The last is now to the extent of 75 per cent a provincial revenue source, the personal income tax to the extent of 24 per cent and the corporation income tax to the extent of about 18 per cent (9 over 50). Where "opting out" has taken place (Quebec) the personal income tax is now a provincial revenue source to the extent of 44 per cent.

Estate Tax

In considering the possibility of further sharing of these sources, we suggest that it would probably be desirable to have the federal government retain even its existing small share of estate tax revenue, to ensure continuance of the relatively uniform national system of death taxes in effect under the present arrangements. We therefore do not suggest further sharing of the estate tax.

Corporate Income Tax

The corporation income tax is a useful fiscal instrument for economic growth because of its influence on corporate capital investment. Since economic growth should continue to be a major concern of the federal government, a substantial share of the tax therefore should continue under federal control. However, in our view, a further transfer of revenue through some increase in the abatement would not materially detract from its value for this purpose. There is no precise way of measuring the additional area that might be given to the provinces without jeopardizing the economic value of the tax, but a share of one-quarter or even one-third would not be regarded as unreasonable.

Personal Income Tax

The personal income tax is recognized as having a special appeal for all governments under the circumstances of recent years. Because of the graduated rates and the continuous movement of taxpayers into higher brackets, revenue is elastic with respect to changes in personal income.

It is, therefore, quite literally a "growth" tax, and the large federal share of this tax explains the relative centralization of tax revenue in Canada. Since provincial and municipal expenditures have been rising considerably faster than federal own-account expenditure, the provincial governments understandably believe that they should have a larger share of this "growth" tax revenue.

It is generally agreed that the personal income tax is the most useful of the direct taxes for economic stabilization; and if a national tax system sufficiently strong to exert economic influence is to be retained, a substantial share of this tax must remain in federal hands. Again there is no precise way of determining what the limit of sharing should be, but the sub-committee is generally agreed that 50 per cent is a working *maximum* ratio. The sub-committee therefore recommends that abatement of personal income tax to the provinces not be allowed to reach much beyond 50 per cent.

Provincial Sharing of Consumption Taxes

At the present time the direct sharing of tax fields is limited to direct taxes by means of the abatement procedure.

Another tax field that is shared, in the sense that both provincial and federal governments levy charges, is the consumption or sales tax. The federal government now levies a general manufacturer's tax of 11 per cent (reduced in the 1966 budget to 6 per cent for production equipment and machinery, and jigs and dies, etc.), and the provinces levy retail sales taxes of from 4 per cent to 6 per cent.

In the opinion of the sub-committee there is no reason why sharing of tax sources should not extend to consumption taxes. The federal government could withdraw gradually from the sales tax areas, leaving room for increased provincial sales tax.

Equalization Payments

At the present time, the federal government makes payments to the provinces for the purpose of equalizing provincial tax revenue from the three main direct taxes—personal and corporate incomes and estates. It does so by ensuring that per capita revenue from the three specified tax fields⁴ at standard rates in each province reaches the average of the top two provinces. The one reservation is that a province which has above-average per capita revenue from natural resources⁵ will have its equalization payment reduced by one-half that excess multiplied by the province's population.

At the present time, studies are being carried out to determine what changes in distribution and amounts of equalization grants would result from including additional tax fields, and the sub-committee reserves judgment on this matter until the results of the studies are known.

The sub-committee nevertheless recommends, in the knowledge that Ontario is effectively paymaster for such transfers, that the Ontario Gov-

ernment attempt to restrain the total amount of equalization payments. The three main matters that determine the amount and allocation of equalization grants are:

- 1) the choice of tax fields included in the formula, and in particular, for any tax chosen, the extent of the divergence in the per capita yield at standard rates, among the individual provinces;
- 2) the level of the standard rates to be used;
- 3) the average to which per capital yields are to be equalized.

The adjustment for natural resources revenue should be continued.

Fiscal Need Grants Rejected

It is sometimes suggested that the federal government should distribute unconditional grants among the provinces on the basis of fiscal need. Under this proposal, fiscal need would be defined as the difference between the tax capacity of the province and the revenue required to provide a national minimum standard of public service. To discover how much each government would require in order to provide a national minimum standard of public services to its residents would be a difficult operational task because of the difficulty of finding out what services all Canadians are entitled to receive, what services are more needed in some areas than others, what services should be assumed as the minimum, how such services would be costed on a national basis, and so on. There would also be the difficult problem of how these decisions would be made—i.e., by the federal government, by an independent body, or by joint consultation?

Even if one were able to measure the revenue required to provide the minimum level of services, one would encounter problems in determining fiscal needs. There is not only the question of what sources of revenue should be included in order to ascertain tax capacity, but also whether account should be taken of relative tax effort among the provinces. If relative tax effort were to be incorporated in the formula, the question would arise as to whether municipal tax effort should be included. If not, then a province could raise its index of tax effort by taking over additional tax burdens from the municipalities.

This approach, while it has some logical appeal, is too complicated for the sub-committee to favour as a working proposal. The whole matter would require a good deal more study than has been given it so far in Canada before any judgment could be made.

Grants for Education Rejected

Another proposal that is frequently heard and which also has great logical appeal is that the federal government should make substantial grants to the provinces in aid of education. This idea is attractive on two grounds—education is a very heavy item in provincial budgets and its encouragement is directly related to fostering economic growth.

The sub-committee considered and rejected this proposal for the reason that education is a jealously guarded responsibility of provincial government, particularly in Quebec, and in the view of the sub-committee any

substantial degree of financial support from the federal government would be wholly unacceptable.

Shared-Cost Programs and Opting Out

Shared-Cost Programs

Since World War II, shared-cost programs have grown into a vast and complex area of federal-provincial finance, calling for close to \$1 billion of federal transfers in a great variety of specific areas, most of them constitutionally under provincial jurisdiction. These programs are mainly the result of a desire for national *minimum* standards based on notions of equity, and objectives for increased mobility of production factors. In the past, federal initiative and formulation of national objectives in such areas of provincial jurisdiction were not resisted by most provinces, Quebec being an exception. Relatively generous participation by the federal government was in most cases a sufficient inducement for the provinces, which were faced with rapidly growing expenditures.

In recent years, the provinces have advanced increasing objections to this type of program on the following grounds:

- 1) administrative and budgetary rigidities;
- 2) distortion of provincial priorities;
- 3) the growth of federal government powers in areas of provincial responsibility.

While these objections are put forward, it is clear that for the poorer provinces the grants from the federal government are the only means by which new programs can be undertaken. In these provinces, local tax revenues would be totally inadequate, no matter what the rates levied, to meet the cost of many of these programs. Furthermore, most provinces recognize that shared-cost programs have made and are making a valuable contribution towards establishing more uniform standards in important economic and social services.

The principal programs, and the federal expenditure under each in 1963-64, are as follows:

	\$ Million
Agriculture	6
Health	53
Hospital Insurance	391
Welfare	172
Vocational Training	137
Highways	52
Resource Development	17
Civil Defence	4
Municipal Winter Works	27
Other	1
	<hr/>
	860
	<hr/>

Source: Canadian Tax Foundation, *The National Finances*, 1965-66.

Opting Out

Under pressure from one province (Quebec) for the cessation of federal grants and the ceding of a "fiscal equivalent", the federal government has undertaken to allow the provinces to opt out of shared-cost programs. The essence of this arrangement is that in return for an undertaking by the province to continue the program at its own expense at least during a transitional period, the federal government allows an increased abatement of its personal income tax to permit an increase in the provincial tax.

Under the opting out procedure, increases in abatements of personal income tax have been established for each of the main standing programs (e.g., hospital insurance, 14 per cent; welfare, 2 per cent; unemployment assistance, 2 per cent, etc.). A province which takes over a program increases its own tax by the amount of the abatement and in addition receives a grant to meet the remaining cost of continuing the program.

Quebec is the only province so far which has opted out of any programs. It is committed to continuing the specified programs along their original lines for interim periods extending at the farthest to the end of 1970. Under the present opting out procedure, the assistance in the form of equalized personal income tax abatements is still conditional and adjustments to the money thus collected guarantee that there will be no loss or gain relative to the participating provinces.

Views of Sub-Committee on Opting Out and Shared Cost

In considering the stand to be taken by Ontario with regard to opting out, the sub-committee has been guided by the following considerations:

- 1) That the existing programs available for opting out would raise the provincial share of personal income tax to 44 per cent (as in Quebec); in short, even this degree of opting out would approach the limit of 50 per cent assumed as the tolerable maximum. As a practical matter therefore, opting out possibilities would be substantially exhausted, at least for the personal income tax, by the existing programs. This suggests either that opting out as a device has run its limit, or that other taxes, particularly the corporate income tax or the sales tax, would have to be brought into the opting-out arrangements.
- 2) That opting out on the basis of a uniform national abatement of taxes for each program, will require the continuation of substantial additional payments to provinces where the standard national abatement would produce insufficient revenue to support the program. Opting out is therefore only a partial answer—in some provinces making a very minor contribution—to securing sufficient revenue for the province.
- 3) That the continuing conditions of opting out are likely to become increasingly ill-defined. As a practical matter, there could neither be a perpetual undertaking by a province to carry on a program nor a perpetual undertaking by the federal government to allow a tax abatement.

With regard to shared-cost programs as a whole, the sub-committee has taken the following view:

that, in many instances, the programs have introduced new and beneficial government services throughout Canada, and the requirement of certain standards has helped to achieve a minimum level of such services;
that, against this beneficial effect, the programs have had the disadvantage of undermining provincial financial autonomy and of establishing conditions which have tended to be too rigid and restrictive.

Recommendations on Shared-Cost Programs and Opting Out

The sub-committee recommends:

that all existing shared-cost programs be reviewed to determine whether they should be continued or discontinued as government programs;
that, for those shared-cost programs which are worthy of continuance, the conditions for qualification by a province be made much less rigid than at present. The grant might be designated for expenditure in, for example, the general area of welfare, with conditions governing actual welfare programs being much broader than in the past.

An exception would be made for the terms governing such programs as Trans-Canada Highways, ARDA and the Confederation Centennial, for which conditions should remain fairly specific.

Since the sub-committee is of the opinion that for existing programs the payment of grants must be continued for the poorer provinces, it has no strong reservations regarding continuation of payments for the wealthier provinces, provided the conditions for eligibility are much less restrictive as recommended above.

The sub-committee's main concern regarding opting out is that, if pressed to its ultimate limits, it would probably require the federal government to offer all existing and future shared programs, the alternative either of a payment to the province or of a further abatement of federal tax. This development could quickly carry the provincial share of personal income tax beyond 50 per cent (it may in fact be beyond that point now with the addition of medicare to existing programs). The sub-committee has assumed that the maximum sharing should be 50 per cent of personal income tax or of the sales tax.

We would therefore recommend either that no further opting out alternatives be offered or that if further offers are made they include abatement of the corporation income tax.

The sub-committee offers three further observations on opting out:

- 1) opting out should be limited to programs where the terms of the program and the opting-out formula offer a suitable choice to all provinces;

- 2) the federal government should take a strong stand against opting out of programs such as family allowances and unemployment insurance which are under its own legal jurisdiction;
- 3) if the conditions for opting out are so relaxed that the funds may be spent in broad areas of responsibility at the discretion of the province, Ontario should consider opting out.

The General Approach Recommended

The sub-committee has not sought to put forward a precise prescription for Ontario in the forthcoming negotiations. Rather it has attempted to list the various elements and the manner in which these elements might be used in a solution.

In general, the sub-committee favours a mixture of policies in which further direct transfers of tax sources from the federal government to the provinces are concentrated in the area of consumption taxes and/or corporation income tax. Further, that shared-cost programs be continued where feasible (for the near future the scope for further programs is considerably restricted by revenue possibilities), but that opting out not be permitted to increase the provincial share of the personal income tax beyond 50 per cent, and that the corporation income tax or sales tax be brought into the opting-out arrangements and be made available to all provinces. Equalization grants should be continued, but, subject to the results of the study now under way, should not be extended much beyond their present scope.

Appendix 1

A Note on the Federal Government's Medicare Scheme

The federal Medicare Scheme was the direct result of the recommendations of the Hall Royal Commission on Health Services, which reported in 1964 and 1965. The Commission suggested a comprehensive health services program to be administered by the provinces and financed to the extent of 50 per cent by the federal government from general revenues.

In July, 1965, the Prime Minister outlined the extent to which the federal government proposed to carry out the recommendations of the Hall Commission. His proposal called for a federal contribution in support of provincial medicare programs that met with basic conditions (outlined below). The federal contribution, which would be available commencing in July, 1967, would amount to approximately one-half of the national per capita cost of a comprehensive program covering all physicians' services. The federal cost was estimated at \$14 per capita in 1967 for a total estimated cost of close to \$300 million. However, it has since been suggested that the per capita contribution would be somewhat higher than \$14.

The four conditions that a provincial plan would have to meet in order to qualify for the federal assistance are as follows:

Scope of Plan. The provincial plan should initially cover as minimum all services provided by physicians, both general practitioners and specialists. It was suggested that nothing in the federal proposal prevents the provinces from providing additional benefits and that the federal government would consider at a later date the possibility of enlarging the services for which it contributes, to include dental services, prescribed drugs and other important services.

Coverage. Provincial plans should be universal and include all residents of the province on uniform terms and conditions as far as is administratively practicable.

Administration. The plans should be publicly administered either by the provincial government or by a provincial government agency.

Transferability. The benefits under any provincial plan should be fully transferable for persons who are absent from their home province and for persons who move from one province to another.

The medicare program provides a once-and-for-all impact on provincial spending priorities, while traditional shared-cost programs mean annual liaison, accountability and federal involvement in the specific areas covered. Under medicare, the provinces would have total freedom after an initial, presumably 3-year, period without any further responsibility to the federal government. Of course, the program would be well-entrenched and irreversible. The provinces would receive an unconditional grant or appropriate tax abatement in lieu of the original conditional medicare support.

Appendix 2

Private and Public Flow of Funds Between Provinces

The following table indicates the provincial distribution of private investment funds by the Canadian capital market in 1964. By this indication, the most intensive capital investment is taking place in Alberta and B.C. and the general tendency is for intensiveness to decline as one goes eastward through the list of provinces. Ontario is somewhat below average, and the figures tend to rise westward of Ontario and decline eastward of Ontario.

Table 1
Per Capita Investment in Business Plant
and Equipment by Province, 1964
(dollars)

Canada	341		
Ontario	327		
Other Canada	349		
Western		Quebec	288
British Columbia	493	Maritimes	
Alberta	498	New Brunswick	261
Saskatchewan	475	Nova Scotia	190
Manitoba	335	Prince Edward Island	208
Average Western	461	Newfoundland	253
		Average Atlantic	229

Federal government policy, however, appears to distribute public funds in a direction which tends to offset the flow of private capital. For example, in 1965, the federal government distributed \$276 million in equalization payments among the provinces. Table 2 shows the per capita provincial distribution of the equalization payments. The highest per capita payments were in the Maritimes. British Columbia, Alberta and Ontario received no equalization payment. Saskatchewan, Manitoba and Quebec received descending amounts which did accord with the direction of flow of private capital.

Table 2
Per Capita Distribution of Federal Equalization
Grants¹ Among the Provinces, 1965
(dollars)

All provinces	14.14
Ontario	—
Other provinces	21.55

Western		Quebec	23.08
British Columbia	—	Maritimes	
Alberta	—	New Brunswick	46.72
Saskatchewan	30.29	Nova Scotia	44.30
Manitoba	25.23	Prince Edward Island	54.68
		Newfoundland	47.44

¹Equalization grants attributable only to the three standard taxes: personal income tax, corporate income tax and estate tax, adjusted by natural resource revenues.

Table 3 shows the per capita provincial distribution of federal government expenditures, by type of expenditure. Table 4 shows the provincial distribution of federal revenue, expenditure and balance, in 1961-62. The source of these statistics is "Reply of the Minister of Finance to Question No. 741 by Mr. Balcer, Made Order for Return, July 22, 1964".

In per capita terms, the Maritimes received the largest amounts, then the western provinces, then Ontario, and lastly Quebec. Quebec received the least, particularly in federal transfer payments to persons and in federal expenditure for goods and services. Saskatchewan ranked unusually high, largely owing to the expenditure on the Saskatchewan dam.

Table 4 indicates that in this particular year the federal government collected a surplus of \$388 million in Ontario and incurred a total deficit of \$1,287 million in the rest of Canada, with deficits in all areas outside Ontario.

Thus, in 1961-62 Ontario was the source of federal government funds transferred to other provinces. In some other years, particularly when the federal government was closer to a balance, some other provinces also were in surplus.

Table 3
Per Capita Distribution of Federal Government
Revenue and Expenditures, Fiscal Year 1961-62
(dollars)

	Federal Transfer Payments			Other Expen.	Total Expen.	Total Revenue	Balance
	to persons	to provinces	to provincial institutions				
All Canada	109	46	3	240	398	348	-50
Territories	104	74	2	1,882	2,062	352	-1,710
Provinces	109	46	3	236	394	348	-46
Ontario	103	31	3	221	358	420	62
Other provinces							
B.C.	133	52	3	258	445	394	-51
Alberta	114	45	3	255	417	347	-70
Sask.	164	58	2	287	513	250	-263
Man.	134	49	3	259	445	330	-115
Quebec	89	45	2	216	352	314	-38
N.B.	122	80	3	249	454	224	-230
N.S.	122	73	5	279	479	238	-241
P.E.I.	140	100	3	317	560	207	-353
Nfld.	110	109	2	298	519	199	-320

Table 4
Provincial Distribution of Federal Revenue
and Expenditure, 1961-62
(thousands of dollars)

	Revenue	Expenditure	Balance
All Canada	6,346,996	7,246,142	-899,146
Territories	13,027	76,300	- 63,273
All provinces	6,333,969	7,169,842	-835,873
Ontario	2,621,247	2,233,521	387,726
Other provinces	3,712,722	4,936,321	-1,223,599
B.C.	641,934	725,368	- 83,434
Alberta	461,776	555,065	- 93,289
Sask.	231,166	474,073	-242,907
Man.	304,221	409,896	-105,675
Quebec	1,651,327	1,805,540	-154,213
N.B.	134,186	272,169	-137,983
N.S.	175,423	352,586	-177,163
P.E.I.	21,752	58,812	- 37,060
Nfld.	90,937	237,812	-146,875

Appendix 3

Regional Changes in Population and Income,
1957 to 1964

Table 5 shows the regional changes in population and in per capita earned personal income from 1957 to 1964. The table indicates that there has been a narrowing of the gaps among the regions in this period. (This represents a shift from the long-term stability of regional differences referred to in the *Second Annual Review* of the Economic Council of Canada.) It also shows that one of the major reasons for this narrowing of the gap was the shift in population.

In 1957, the low levels of per capita earned personal incomes were in the Atlantic provinces, Quebec, Manitoba and Saskatchewan. From 1957 to 1964 these regions had the highest percentage changes in per capita earned personal income. Furthermore, in proportion to other provinces, the Atlantic provinces lost population from 1957 to 1964, and the relative loss by 1964 amounted to 5.7 per cent of the population in the Atlantic provinces in 1957. For the Manitoba-Saskatchewan region, the relative loss amounted to 6.7 per cent of the 1957 population. Quebec, however, obtained a relative gain in population amounting to 0.9 per cent of its 1957 population.

Analysis of shifts in population and per capita incomes in the United States reveals similar narrowing of differences and similar population mobility.

In order to bring the per capita personal incomes to the national average in 1964, it would have been necessary to reduce Ontario's personal income by 14.5 per cent (\$208 per capita). The growth in Ontario's aggregate output in current dollars over the period 1964 to 1984 is estimated at about 6.5 per cent per annum, providing a rise in personal income from \$13,996 million in 1964 to \$49,300 million. If an attempt were made to equalize per capita personal incomes by 1984 without population shifts, then Ontario's 1984 personal income figure would be \$42,150 million rather than \$49,300 million, for a loss of \$7,150 million, and a reduction of the growth rate to 5.6 per cent rather than 6.5 per cent over the period. However, this calculation must be qualified. Actually, the massive shift of jobs and incomes from high-productivity provinces such as Ontario and B.C. to low-productivity provinces would reduce the Canadian rate of growth. As a result Ontario's rate of growth would be even less than the 5.6 per cent. It would mean equalizing the distribution of a total pie that would be diminishing continually below its potential size.

This is the direction in which federal-provincial financial arrangements have been going since 1957, and the direction in which federal policy has been moving in both its provincial distribution of revenue and expenditure and its development policies, such as the designated area program.

Table 5
Regional Changes in Population and Income,
1957 to 1964

	Per Capita Earned Personal Income			Population		
	% Change 1957-1964 %	% of All- Province Average		% Change 1957-1964 %	Change Relative to All Provinces (¹ 000)	Relative Change as % of 1957
		1957	1964			
Atlantic	30.3	62.4	64.5	10.6	-93	-5.2
Quebec	28.0	85.7	87.0	10.6	41	0.9
Ontario	23.5	122.2	119.7	16.9	61	1.1
Man. & Sask.	37.0	87.5	95.0	9.1	-116	-6.7
Alberta	21.9	102.1	98.7	23.0	84	7.2
B.C.	20.3	119.6	114.1	17.3	22	1.5
Total provinces	26.2	100.0	100.0	15.8	—	—

Footnotes

¹The "tax indicator" measures the potential revenue yield available to each province from a composite tax system including income, asset, consumption and production taxes.

The potential provincial yield for each of these revenue sources is computed by applying the all-province average rate to a standard tax base, e.g., corporation taxable income, estate tax assessments and taxable retail sales.

Tax effort, or the extent to which a province is using its potential revenues, is determined by comparing the actual yield against the potential yield for each revenue source.

²The "total income" approach measures fiscal capacity in terms of the amount of income received or produced within a province. This method is based on the premise that, in the final analysis, all taxes are paid out of income.

Gross income received by individuals and corporations in a province is combined in order to arrive at a tax base. In addition, fiscal capacity in respect to natural resources is determined on the basis of the calculated value of natural resources production, rather than in terms of actual income received from sales.

³Since these figures are based on the national accounts, they do not agree with government statements of budgetary surpluses or deficits.

⁴For the purpose of equalization, the estates tax abatement is considered to be 50 per cent.

⁵Revenue from natural resources, for these purposes, is calculated by taking 50 per cent of the average for the three preceding years.

Proposals for Changes in the
Canadian Federal System
– A Summary

*Federal-Provincial Affairs Secretariat
Office of the Chief Economist*

December, 1966

This summary lists a wide variety of suggestions that have been made for changes in the Canadian federal system, ranging from minor adjustments to wholesale revisions.

Preface

This summary of proposals for changes in the Canadian federal system has been prepared from the following books and articles:

M. Faribault and R. Fowler

Ten To One: The Confederation Wager

Peter O'Hearn

Peace, Order and Good Government: A New Constitution for Canada
Saint Jean-Baptiste Society

A New Constitution for Canada (Commentator, September, 1964)

Jacques-Yvan Morin

A New Constitutional Equilibrium for Canada (P. Crepeau and C. B. Macpherson, *The Future of Canadian Federalism*)

Statement of the Parti Socialiste du Québec, January, 1963 (M. Oliver and F. Scott, *Quebec States Her Case*)

A brief submitted to the Quebec Legislative Assembly's Committee on the Constitution by the *Confederation of National Trade Unions*, the *Quebec Federation of Labour*, and the *Catholic Farmers' Union*, September, 1966

Declaration by the Canada Committee of French- and English-Speaking Canadians, March, 1966.

J. R. Mallory

The Five Faces of Federalism (P. Crepeau and C. B. Macpherson, *The Future of Canadian Federalism*)

W. L. Morton

Needed Changes in the Canadian Constitution (G. Hawkins, *Concepts of Federalism*)

D. Kwavnick

The Roots of French-Canadian Dissent (*Canadian Journal of Economics and Political Science*, November, 1965).

Proposals for Changes in the Canadian Federal System—A Summary

M. Faribault and R. Fowler
Ten To One: The Confederation Wager

Distribution of Powers

The distribution of powers in this scheme follows the principle of watertight compartments and an attempt is made to define them very specifically.

Those powers to be changed from federal to provincial jurisdiction are: inland fisheries; marriage and divorce; savings banks; Indians and Eskimos (this is to be a concurrent power with provincial paramountcy). The provinces are to have the power to conclude international treaties dealing with matters under their jurisdiction.

Certain federal powers are to be clarified and others are to be added. These include: commercial policy—regulation of international or interprovincial combines, monopolies, mergers or unfair business practices; communications—post office, telephone, telegraph, radio, television; control of drugs and poisons; meteorological services; preventive detention; imposition of penalties for infractions of federal law.

Provincial powers are to include those transferred from the federal jurisdiction and those already in the *B.N.A. Act* are to be extended or clarified. There are to be no residual powers. New areas must be decided by constitutional amendment.

Provisions dealing with the incorporation of companies: interprovincial or international railways, canals, ferries, or airlines, and commercial banks are to be incorporated by the federal government. All other companies are to be incorporated by the provincial government.

The following powers are to be concurrent: agriculture; social welfare; epidemics; unemployment; foreign aid; scientific research; art and culture; Indians and Eskimos. No federal program need be accepted by any province that wishes to opt out and no province is to suffer any financial loss from opting out.

No delegation of powers is to be allowed.

Civil Rights

There is to be a Bill of Rights entrenched in the Constitution.

This Bill of Rights will include: freedoms of conscience, religion, speech and peaceful association; equality of all before the law; no dis-

crimination on the grounds of sex, race, religion, age, language or political opinion; the right to participate in public affairs; the right to challenge the constitutionality of all laws; the right of aliens to own property, enter into contracts, have recourse to the courts, to be informed of the reasons for deportation; legal rights—the right to counsel, to the presumption of innocence, to protection against self-incrimination, to freedom from arbitrary detention, unjust imprisonment or exile, or from cruel or unusual punishment.

Bilingual-Bicultural Rights

There is to be obligatory instruction in English and French in all schools.

The Governor-General, Supreme Court justices, and the law clerks of the Senate and Commons must be bilingual.

All laws and proclamations are to be published in both languages.

Either language will be permissible in Parliament, in federal courts, in the federal capital and in federal government departments.

All communications with federal government departments are to be answered in the official language used in that communication.

When the French-speaking minority attains the level of 20% of the population of a province, French is to become an official language of that province. It will be acceptable in the courts, in the legislature and in provincial departments located in the provincial capital. French will cease to be an official language in a province when the French-speaking minority falls below 10 per cent of the population of that province. There are to be no restrictions on the use of other languages for the education and internal administration of communities made up of non-French- or non-English-speaking people.

Senate

The principle of regional equality is to be re-established. Each of the four regions is to have 24 senators.

Ontario	24	Quebec	24
Maritimes	24	West	24
Nfld.	6	Man.	6
P.E.I.	2	Sask.	6
N.S.	8	Alta.	6
N.B.	8	B.C.	6

Retirement of senators at age 75 is to be compulsory.

In each province, senators are to be appointed alternately by the provincial governor-in-council and the federal governor-in-council. The first appointment is to be made by the former.

The Senate's duties will include: supervision of the constitution; concern for federal and provincial rights; supervision of national boards, commissions, and public corporations.

It is hoped that more senators will be included in the Cabinet in such portfolios as federal-provincial affairs and cultural affairs.

Commons

There are to be 242 members of the House of Commons including 2 from the unorganized territories.

On the basis of 240 members for the provinces, there will be a member for each 76,000 people. No constituency is to depart from the unit of representation (76,000) by more than 25 per cent. For each province, the number of members will be:

Nfld.	6 (7)	Ont.	82 (85)
P.E.I.	2 (4)	Man.	12 (14)
N.S.	10 (12)	Sask.	12 (17)
N.B.	8 (10)	Alta.	18 (17)
Quebec	69 (75)	B.C.	21 (22)

(Present representation in brackets)

Provincial Legislatures

The legislative, judicial and executive functions must be separated.

The head of state of each province is to be appointed and his title determined by the *provincial* executive.

Provinces can establish their own constitutions.

The federal government is no longer to have the power to disallow or to reserve provincial acts.

Courts

The Supreme Court: at least one third of the judges must be from Quebec. In civil law cases, there is to be a panel of judges trained in the civil law. Such a panel could consist of the judges of the Supreme Court from Quebec, plus judges chosen from the courts of Quebec.

Provincial Superior Courts: judges are to be appointed by the provinces who are also to be responsible for their remuneration.

Constitutional Court: is to consist of the Supreme Court judges and the provincial chief justices. Thus, both federally and provincially appointed judges would hear constitutional cases. Each case would be heard by a panel of four Supreme Court judges, and three provincial chief justices. All decisions, including dissents, are to be accompanied by written reasons. Cases can be referred to the Court by the federal governor-in-council, the Senate, the Commons or any provincial legislature.

Public Finances

The principle to be followed allocates broad concurrent powers over taxation to both levels of government. Customs duties, however, would be exclusively federal, and taxes on real estate, its transfer and its sale, exclusively provincial.

Success will require continuing consultation and co-operation.

The instrumentality will be the Fiscal Commission. It will have 12

members, four to be appointed by the federal government, and two by each of the four regions of the country. The Commission must provide federal-provincial financial conferences with expert advice. The Commission will perform the following acts: provide all governments with accurate statistics and facts with regard to revenue needs, probable tax yields and the economic effect of tax changes; promote efficiency and uniformity in tax collection and tax forms across the country; seek the best way to keep taxation fairly equal across Canada.

Amendment Procedure

The Fulton-Favreau formula is approved in principle but these two authors think that a simpler formula can be used if their constitution is adopted.

The British Parliament is to repeal Section 7 (1) of the *Statute of Westminster* in order to force Canada to adopt an amending formula.

The formula they suggest divides the Constitution into three parts. One requires an Act of Parliament and ratification by two-thirds of the provinces containing at least 50 per cent of the population of the country. The second part requires an Act of Parliament and ratification by two-thirds of the provinces containing at least 75 per cent of the population. The third part requires an Act of Parliament and ratification by all provinces.

Peter O'Hearn *Peace, Order and Good Government:
A New Constitution for Canada*

Distribution of Powers

Mr. O'Hearn divides governmental powers into federal and provincial, but both governments are free to legislate on any power. It is a question of paramountcy. Any federal law dealing with any matter within its field of jurisdiction is paramount to any provincial law in that field. However, any federal law dealing with a matter within the provincial field of jurisdiction must yield when the province legislates on that matter.

Marriage and divorce are to be placed among the provincial paramount powers.

Provinces become paramount in agricultural matters.

Provinces acquire legal jurisdiction over fisheries within their own limits.

Federal powers, with the changes mentioned, are retained as at present, although in more general or in more restricted terms.

Civil Rights

The Constitution is to be supreme and will contain the following rights: all laws must be promulgated; equal protection of the law to everyone; no hereditary public office or honours to be permitted; prohibition of slavery; freedom of conscience; freedom of association;

freedom of education; the right to work; no one to be compelled to belong to an association; the right to productive property; due process. Existing constitutional rights in the field of education are to be entrenched.

Bilingual-Bicultural Rights

French and English are to be the official languages and can be used in the federal Parliament, the provincial legislatures, and in all courts. Both languages are to be used in the records and journals of Parliament and in all parliamentary acts.

Section 133 of the *B.N.A. Act* is to be repealed since it discriminates against the province of Quebec.

It is to be hoped that provinces with either large English or French minorities will make provisions for them in accord with the spirit of the constitution.

Senate

The Senate is to represent the provinces, minority groups and special interest groups.

Each province is to have equal representation in the Senate. Each province is to elect or to appoint an equal number of senators so that the total will constitute at least two-thirds of the Upper House. The other one-third will be chosen from among minority groups, aboriginal groups, trade unions, cultural organizations or universities. It might be possible also to include former governors-general, prime ministers, and senior privy councillors.

The final details of the representation are to be worked out by the federal Parliament and the provincial legislatures, with the former to have the dominant voice.

The Senate will no longer have complete veto power. A bill will not be able to be blocked by the Senate if the Commons has submitted itself to a general election over the issue.

Commons

The Commons is to be organized into single-member constituencies in which no one is to have more than twice the population of another. Each province is to have at least two members in the Commons.

Any measure approved by both Houses of Parliament must receive royal assent if re-passed at the same session or the ensuing one by at least two-thirds of the members present. This section is included in case it is decided to scrap the cabinet system of government in favour of a presidential system. Mr. O'Hearn's Constitution leaves this question open.

Provincial Legislatures

The position of lieutenant-governor is no longer to be constitutionally entrenched.

There is to be a representative assembly.

There is to be no federal reservation or provincial upper house veto of bills. Any measure approved by the legislature in three consecutive sessions where the first and third approval is at least 18 months apart shall become law.

Courts

Superior Court judges in a province are to be appointed by the provincial administration.

Public Finance

All tax fields are to be open both to the federal and to the provincial governments, except for customs duties which are to be exclusively federal and real estate taxes which are to be exclusively provincial.

It will still require political negotiations to reach tax-sharing agreements. The provinces are to bargain collectively.

Equalization payments are to be continued.

The instrumentality for these negotiations is to be a Federal Council.

The Council is to consist of one delegate from each province and federal delegates not to number more than the total provincial delegates.

The chairman is to be chosen from among the federal delegates.

The Council is to have the power to share taxes for up to a ten-year period. Any decision of the Council must have the approval of a majority of federal delegates and a majority of provincial delegates representing provinces with at least a majority of the population of Canada.

Amendment Procedure

The Bill of Rights and the amendment procedure itself will require an Act of Parliament and ratification by all the provinces.

All other articles of the Constitution will require an Act of Parliament and ratification by at least two-thirds of the provinces containing no less than three-quarters of the population of Canada.

Saint Jean-Baptiste Society A New Constitution for Canada

Type of Federalism

Associate statehood is advocated. This is to consist of a federation between the English-speaking Canadian provinces and Quebec.

Distribution of Powers

In principle, both states are completely sovereign but will agree in the act of federation to limit their sovereignty. They will agree by treaty to exercise certain powers conjointly. This treaty will be reviewed every five years.

Bilingual and Bicultural Rights

French and English are to be official and compulsory in all the bodies of the confederal state.

The Executive of the Confederation

The governments of each state sitting together are to form the Supreme Council of the Confederation. There will be an equal number of representatives from each state.

The duties of the Supreme Council will be: supervision of the execution of the laws passed by the Confederal House, selection of civil servants, carrying out of foreign policy, creation of the Confederal Court, establishment of close co-operation between the states in areas of mutual concern, e.g., economic planning, monetary policy, customs, continental transport, financing of the central administration, etc.

Confederal Legislature

There will be equal representation from each state chosen by methods to be determined in the process of federating.

A majority of the representatives from each state will have to approve each legislative decision.

State Legislatures

In Quebec, a referendum will be held to decide whether to adopt a republican system of government.

If approved, the president is to be chosen by members of the Quebec Parliament and an equal number of electors chosen by municipal councillors across the state.

The Chamber of Deputies and the Chamber of Councillors are to be elected.

Jacques-Yvan Morin *A New Constitutional Equilibrium For Canada*

Type of Federalism

The two-nation theory is put forth. Quebec is to have a special status.

Distribution of Powers

In Quebec, the federal Parliament is to have jurisdiction over external affairs, defence, interprovincial commerce and transport, monetary policy, customs, equalization.

Quebec is to have treaty-making powers over matters within her legislative jurisdiction.

There is to be joint economic planning at the federal level.

Civil Rights

The new constitution is to contain a declaration of human rights similar to those suggested by the various international conventions.

Quebec is to enact a Bill of Rights.

Minority rights are to be guaranteed by the federal Parliament.

Bilingual-Bicultural Rights

The rights of both English- and French-speaking Canadians must be extended across Canada. This must be true of educational rights in particular.

All provinces with a French-speaking minority of 5 per cent of their population must accord that minority the same rights as those enjoyed by the English-speaking minority in Quebec.

The Senate is to see that these rights are respected.

Senate

Each nation is to be equally represented in the Senate. The representation is to be based on nationality.

Cabinet ministers can come from either House.

Senators are to be appointed for a limited term and will have a compulsory retirement age. They are to be chosen (or elected) from among political parties, professional groups, cultural organizations or trade unions.

The Senate will safeguard minority rights as well as the rights of both national groups, will approve diplomatic and judicial appointments, will approve federal treaties, will approve constitutional amendments and will supervise broadcasting.

Federal Executive

Bi-national boards are to participate in the policy-making of the federal government.

The Provinces

Quebec must have power over her own economy, including responsibility for all welfare services.

The other provinces can integrate as much as they desire. They can delegate powers to Ottawa or change the constitutional distribution of powers between themselves and Ottawa.

Courts

Constitutional Court: It is to be composed of an equal number of English- and French-speaking judges. They are to be appointed by the provinces or elected by the Senate.

Supreme Court: It should be divided into two distinct chambers, common and civil law. It is also possible that the Quebec Court of Appeal could become the court of last resort for Quebec civil law cases.

Public Finances

It will be necessary to readjust the division of taxes because of the new split in economic responsibilities.

Amendment Procedure

After the new constitutional order has been adopted, it is necessary that Quebec be guaranteed that there will be no changes affecting her without her consent.

All provisions dealing with the autonomy of Quebec and her participation in the federal Parliament and administration are to be entrenched.

Statement of the Parti Socialiste du Québec,
January, 1963

Type of Federalism

The Party advocates a Confederation of Associate States.

Distribution of Powers

The Constitution will state clearly the matters of jurisdiction of the Confederation and of the state of Quebec.

Quebec is to possess all the powers necessary for the political, cultural, social and economic development of its citizens.

Quebec is to have exclusive jurisdiction over the following matters:

- criminal and civil law, including the appointment and remuneration of judges;
- all levels of public education, including universities, technical and professional schools, and schools of art, science and letters;
- cultural and information media, including radio and television, newspapers, publishing houses;
- social welfare, although this will not preclude agreements with Confederal authorities;
- agriculture;
- labour and industrial relations, although a Confederal agreement is possible;
- transportation and communications within its territory, e.g. canals, ferries, railways, airlines, telecommunications (where international agreements are affected, Quebec will have to make special arrangements with the Confederation for the enactment of general laws);
- trade and commerce within its borders.

The Confederation will have jurisdiction over trade and commerce having clear Confederal or international aspects.

Bilingual-Bicultural Rights

All Canadian citizens will have the right to communicate with Confederal public bodies in one of the two official languages.

In all Confederal services affecting Quebec citizens, higher level officials will have to be completely bilingual.

The Executive of the Confederation

The Confederal administration will have a fixed representation from Quebec appointed by the Quebec government.

Quebec will have the right to proportionate representation at every level of the various confederal bodies, including commissions and public corporations.

State of Quebec

Quebec will have her own constitution which will include a Bill of Rights based on the Universal Declaration of Human Rights.

The lieutenant-governor will be replaced by a president. He will be appointed by the Quebec government and will be responsible for relations with the English-speaking federation.

Courts

A Confederal Court will be established to deal with constitutional disputes.

When Quebec is involved, the Court is to be composed of 3 judges appointed by the federation of the English-speaking provinces and 3 judges appointed by the state of Quebec. The chairman will be chosen by mutual agreement or by lot from a periodically revised roster.

A constitutional dispute is defined as any case of disagreement in the interpretation of the Confederation pact.

Public Finances

Quebec is to have prior rights to all revenues needed to fulfil its constitutional functions.

Quebec will, however, accord the Confederation sufficient revenues to carry out its constitutional powers.

Customs duties will be within confederal jurisdiction but Quebec will have the right to participate in the formulation of customs and tariff legislation.

Quebec will collaborate in aid to underdeveloped regions undertaken by the Confederation but will require a voice in making the decision.

The Confederation will issue and control money but Quebec will be represented in the bodies responsible for monetary policy.

A Quebec State Bank will be established.

Quebec will have the power to legislate on consumer credit and trade and commerce within its borders.

A Brief Submitted to The Quebec Legislative Assembly's
Committee on The Constitution by The Confederation of
National Trade Unions, The Quebec Federation of Labour,
And the Catholic Farmers' Union, September, 1966

Distribution of Powers

If fundamental liberties are entrenched in the constitution, the right of the federal government to reserve and disallow provincial legislation will be abolished.

Matters for concurrent jurisdiction: certain matters declared by the courts to be under federal jurisdiction are to come under joint control, e.g., radio and television.

The provinces are to have the right to be consulted about immigration policy, monetary and fiscal policy, and foreign trade policy.

The ambiguity between culture and education is to be cleared by placing them both under provincial jurisdiction.

Provinces will have the right to make international cultural agreements. All social security is to come under provincial jurisdiction, including areas already conceded by constitutional amendment. Delegation of powers is to be allowed.

Civil Rights

There is to be a declaration of the fundamental rights and liberties applicable to all citizens across Canada. This declaration will include a statement of educational and religious rights.

It will also affirm to all citizens the right of an adequate standard of living and the right to work for those desirous and capable of doing so. These rights must be constitutionally entrenched.

Bilingual-Bicultural Rights

A bilingual-bicultural federal capital district must be created.

At the federal level, the equality of French and English must be absolute. All laws and regulations must be published in both languages. This must apply to federal Crown corporations and agencies as well as the civil service and armed forces. Rules to achieve this state must be introduced according to a strict schedule.

Only one language is to be official in a province. However, where there is a French-speaking or English-speaking minority in a province of at least 15% of the province's population or 500,000 in absolute numbers, then the legislature is to function on the basis of absolute equality between the two languages. It is doubted that this can be extended to the provincial executive and judiciary. However, it is to be understood that a citizen has the right to an interpreter in any communication with the authorities.

Courts

The Supreme Court is viewed with a jaundiced eye in Quebec since all judges are appointed by the federal government. It is therefore advisable to create a Constitutional Court so constituted as to ensure its impartiality between federal and provincial authorities.

Declaration By The Canada Committee Of French- And English-Speaking Citizens

Bilingual-Bicultural Rights

French-speaking Canadians in the other provinces must have the same rights to education as now enjoyed by English-speaking Canadians in Quebec.

Where the size of the minority warrants it, both French and English must be the official languages in the legislature and courts of a province.

French and English must have equal treatment in the federal civil service.

These rights must be entrenched.

Senate

The Senate is to supervise the enforcement of all minority rights and to refer cases to the Supreme Court when necessary.

Courts

A special section of the Supreme Court must be constituted to hear civil law cases.

There must be a special panel of the Supreme Court composed of English- and French-speaking judges to hear constitutional cases.

J. R. Mallory *The Five Faces Of Federalism*

Bilingual-Bicultural Rights

Rights of access to courts and municipal services conducted in one's mother tongue (English or French) must be extended where reasonable.

These rights must be constitutionally entrenched.

Courts

A Constitutional Court more representative than the Supreme Court may be necessary.

Its role will be to protect the rights of government departments, the rights of individuals, and the rights of minorities.

W. L. Morton *Needed Changes In The Canadian Constitution*

Type of Federalism

Few changes are necessary in the present constitution.

Quebec has the power under the present constitution to realize her aims.

It is necessary that English-speaking Canadians adopt a new attitude toward Quebec and French Canada.

Distribution of Powers

Amendments are needed for language, legal and educational rights under Sections 92, 93 and 133 of the *B.N.A. Act*.

Bilingual-Bicultural Rights

Educational facilities must be provided for French Canadians where their numbers warrant it anywhere in Canada.

French must be an official language where the size of the French-speaking minority warrants it.

Courts

It is necessary that the civil law not be distorted by the English language or by common law procedures.

D. Kwavnick *The Roots of French-Canadian Dissent**General*

It is necessary that a change of attitude occur in English-speaking Canada. They must accept French-speaking Canadians as full partners in Confederation.

The values of both groups are now the same.

Distribution of Powers

It may be necessary to strengthen the powers of the central government in order to realize the economic goals of the country.

Now that these goals are common to both English- and French-speaking Canadians this should not prove to be too difficult.

Bilingual-Bicultural Rights

There must be public education facilities in French where the French-speaking minority warrants it.

The provisions of Section 133 of the *B.N.A. Act* must be extended to provinces where there is a sizable French-speaking minority.

French must be accepted as an official language in the federal civil service, armed forces, etc.

Franco-Ontarian Population
By Ethnic Origin and by
Mother Tongue
For Each County
of the Province of Ontario
– A Table

*Federal-Provincial Affairs Secretariat
Office of the Chief Economist*

February, 1967

This table has been prepared from D.B.S. statistics of the 1961 census. It contains data on the Franco-Ontarian population by ethnic origin and by mother tongue for each county and district of the province. The data also expresses the Franco-Ontarian population as a percentage of a county's total population. In addition, the figures and percentages are provided for the municipal subdivisions of the counties and districts.

This data has been most useful to the members of the Committee in their discussions of possible bilingual districts in Ontario.

Franco-Ontarian Population By Ethnic Origin and by Mother Tongue For Each County of the Province of Ontario—A Table

This table has been compiled from figures supplied by the Dominion Bureau of Statistics from the census of 1961.

The Bureau uses the following definitions:

mother tongue—the language first learned in childhood and still understood.

ethnic origin—is traced through the father. The question asked was: "To what ethnic or cultural group did you or your ancestor (on the male side) belong on coming to this continent?" The language spoken at that time by the person, or his paternal ancestor, was used as an aid in the determination of the person's ethnic group.

Counties	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Algoma	111,408	21,234	19.1	13,244	11.9
Brant	83,839	2,525	3.0	771	0.9
Bruce	43,036	672	1.6	74	0.2
Carleton	352,932	94,970	26.9	80,941	22.9
Cochrane	95,666	47,539	49.7	44,147	46.1
Dufferin	16,095	163	1.0	41	0.3
Dundas	17,162	1,696	9.9	739	4.3
Durham	39,916	1,013	2.6	232	0.6
Elgin	62,862	1,853	2.9	484	0.8
Essex	258,218	55,337	21.4	27,789	10.8
Frontenac	87,534	6,353	7.3	1,714	2.0

Counties	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Glengarry	19,217	11,061	57.6	9,133	47.5
Grenville	22,864	2,051	9.0	671	2.9
Grey	62,005	1,120	1.8	140	0.2
Haldimand	28,197	683	2.4	154	0.5
Haliburton	8,928	449	5.0	197	2.2
Halton	106,697	3,478	3.3	1,136	1.1
Hastings	93,377	7,210	7.7	2,013	2.2
Huron	53,805	2,236	4.2	938	1.7
Kenora	51,474	4,799	9.3	2,214	4.3
Kent	89,427	11,014	12.3	4,613	5.2
Lambton	102,131	7,448	7.3	3,542	3.5
Lanark	40,313	2,636	6.5	823	2.0
Leeds	46,889	3,357	7.2	1,199	2.6
Lennox & Addington	23,717	1,030	4.3	130	0.5
Lincoln	126,674	5,933	4.7	2,454	1.9
Manitoulin	11,176	553	4.9	90	0.8
Middlesex	221,422	6,703	3.0	1,940	0.9
Muskoka	26,705	1,590	6.0	456	1.7
Nipissing	70,568	30,793	43.6	25,408	36.0
Norfolk	50,475	1,283	2.5	392	0.8
Northumberland	41,892	1,604	3.8	322	0.8
Ontario	135,895	5,401	4.0	2,063	1.5
Oxford	70,499	1,668	2.4	474	0.7
Parry Sound	29,632	3,110	10.5	1,009	3.4
Peel	111,575	3,426	3.1	1,256	1.1
Perth	57,452	1,452	2.5	199	0.3
Peterborough	76,375	3,315	4.3	468	0.6
Prescott	27,226	22,773	83.6	22,491	82.6
Prince Edward	21,108	968	4.6	183	0.9
Rainy River	26,531	2,799	10.5	1,085	4.1
Renfrew	89,635	14,044	15.7	5,498	6.1
Russell	20,892	15,293	73.2	16,166	77.4
Simcoe	141,271	15,022	10.6	7,552	5.3
Stormont	57,867	27,672	47.8	21,206	36.6
Sudbury	165,862	65,129	39.3	59,940	33.1
Thunder Bay	138,518	12,692	9.2	6,142	4.4
Timiskaming	50,971	15,637	30.7	13,617	26.7
Victoria	29,750	850	2.9	126	0.4
Waterloo	176,754	6,995	4.0	1,764	1.0
Welland	164,741	15,066	9.1	10,336	6.3
Wellington	84,702	1,721	2.0	466	0.6
Wentworth	358,837	14,318	4.0	5,604	1.6
York	1,733,108	58,012	3.3	24,516	1.4

County	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
ALGOMA	111,408	21,234	19.1	13,244	11.9
<i>Townships</i>					
Day &					
Bright Additional	299	20	6.7	1	0.3
Elliot Lake I.D.	13,179	4,395	33.3	3,667	27.8
Hilton	116	14	12.1	10	8.6
Jocelyn	137	2	1.5	0	0
Johnson	629	43	6.8	11	1.7
Korah ¹	10,338	1,736	16.8	634	6.1
Laird	629	60	9.5	21	3.3
Macdonald, Meredith					
& Aberdeen Additional	1,200	53	4.4	14	1.2
Michipicoten	4,439	911	20.5	663	14.9
Plummer Additional	446	36	8.1	10	2.2
Prince	597	149	25.0	30	5.0
St. Joseph	902	84	9.3	20	2.2
Tarbutt & Tarbutt					
Additional	241	9	3.7	0	0
Tarentorus	11,537	1,874	16.2	846	7.3
Thessalon	702	37	5.3	20	2.8
Thompson	127	44	34.6	18	14.2
White River I.D.	836	212	25.4	111	13.3
Wicksteed	1,727	311	18.0	176	10.2
Unorganized	10,716	3,452	32.2	2,517	23.5
Indian Reserves	2,120	49	2.3	60	2.8
<i>Cities</i>					
Sault Ste. Marie	43,088	5,194	12.1	2,469	5.7
<i>Towns</i>					
Blind River	4,093	2,138	52.2	1,710	41.8
Bruce Mines	484	23	4.8	9	1.9
Nesterville	79	27	34.2	7	8.9
Thessalon	1,725	378	21.9	149	8.6
<i>Villages</i>					
Hilton Beach	155	2	1.3	2	1.3
Iron Bridge	867	141	16.3	69	8.0

¹Comprised of the townships of Korah, Awenge & Parke.

County	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
BRANT	83,839	2,525	3.0	771	0.9
<i>Townships</i>					
Brantford	7,764	177	2.3	62	0.8
Burford	5,492	113	2.1	19	0.3
Dumfries S.	3,241	42	1.3	21	0.6
Oakland	1,323	26	2.0	5	0.4
Onondaga	1,199	36	3.0	4	0.3
Indian Reserves	3,799	5	0.1	4	0.1
<i>Cities</i>					
Brantford	55,201	2,005	3.6	638	1.2
<i>Towns</i>					
Paris	5,820	121	2.1	18	0.3
BRUCE	43,036	672	1.6	74	0.2
<i>Townships</i>					
Albemarle	661	7	1.1	0	0
Amabel	1,636	15	0.9	3	0.2
Arran	1,416	13	0.9	3	0.2
Brant	2,800	57	2.0	2	0.1
Bruce	1,306	4	0.3	0	0
Carrick	2,534	60	2.4	5	0.2
Culross	1,769	26	1.5	1	0.1
Eastnor	951	10	1.1	0	0
Elderslie	1,214	3	0.2	0	0
Greenock	1,853	45	2.4	0	0
Huron	1,449	6	0.4	1	0.1
Kincardine	1,626	8	0.5	5	0.3
Kinloss	1,258	18	1.4	5	0.4
Lindsay	374	0	0	0	0
St. Edmunds	571	36	6.3	0	0
Saugeen	1,017	4	0.4	1	0.1
Indian Reserves	927	2	0.2	3	0.3
<i>Towns</i>					
Chesley	1,697	30	1.8	1	0.1
Kincardine	2,841	53	1.9	9	0.3
Port Elgin	1,632	25	1.5	3	0.2
Southampton	1,818	32	1.8	4	0.2
Walkerton	3,851	97	2.5	4	0.1
Wiarton	2,138	29	1.4	6	0.3

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Villages</i>					
Hepworth	358	12	3.4	1	0.3
Lion's Head	416	5	1.2	2	0.5
Lucknow	1,031	16	1.6	1	0.1
Mildmay	847	19	2.2	2	0.2
Paisley	759	9	1.2	2	0.3
Ripley	464	5	1.1	0	0
Tara	481	2	0.4	0	0
Teeswater	919	4	0.4	0	0
Tiverton	422	20	4.7	10	2.4
CARLETON	352,932	94,970	26.9	80,941	22.9
<i>Townships</i>					
Fitzroy	2,310	112	4.8	15	0.6
Gloucester	18,301	7,399	40.4	7,249	39.6
Goulbourn	2,146	103	4.8	43	2.0
Gower N.	2,694	118	4.4	67	2.5
Huntley	1,696	56	3.3	30	1.8
March	968	76	7.9	36	3.7
Marlborough	953	104	10.9	77	8.1
Nepean	19,753	1,726	8.7	760	3.8
Osgoode	5,786	785	13.6	481	8.3
Torbolton	757	50	6.6	21	2.8
<i>Cities</i>					
Ottawa ¹	268,206	68,549	25.6	56,882	21.2
<i>Towns</i>					
Eastview	24,555	15,547	63.3	14,976	61.0
<i>Villages</i>					
Richmond	1,215	85	7.0	40	3.3
Rockliffe Park	2,084	263	12.6	217	10.4
Stittsville	1,508	87	5.8	47	3.1
¹ Includes 4,698 official government representatives serving abroad June 1, 1961—stated Ottawa as their official residence.					
COCHRANE	95,666	47,539	49.7	44,147	46.1
<i>Townships</i>					
Black River ¹	3,091	1,572	50.9	1,451	46.9
Calvert	5,494	3,307	60.2	3,081	56.1

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Townships</i>					
Fauquier	1,241	1,140	91.9	1,148	92.5
Glackmeyer	1,140	682	59.8	613	53.8
Kendrey	1,074	887	82.6	868	80.8
Kingham I.D. ²	27	0	0	0	0
Mountjoy	2,437	1,728	70.9	1,678	68.9
Playfair	807	630	78.1	647	80.2
Shackleton & Machin	1,106	1,050	94.9	1,077	97.4
Tisdale	8,650	996	11.5	555	6.4
Val Albert I.D.	2,583	2,041	79.0	2,046	79.2
Whitney	1,838	384	20.9	262	14.3
Unorganized	18,549	11,538	62.2	11,211	60.4
Indian Reserves	930	1	0.1	1	0.1
<i>Towns</i>					
Cochrane	4,521	2,216	49.0	1,950	43.1
Hearst	2,373	1,819	76.6	1,795	75.6
Iroquois Falls	1,681	415	24.7	320	19.0
Kapuskasing	6,870	3,096	45.1	2,771	40.3
Matheson	853	135	15.8	106	12.4
Smooth Rock Falls	1,131	659	58.3	606	53.6
Timmins	29,270	13,243	45.2	11,961	40.9
¹ Comprised of the townships of Stock, Taylor, Carr, Beatty, Bond, Currie, Bowman, Hislop and parts of Walker.					
² Total population 79, for other part see Timiskaming.					
DUFFERIN	16,095	163	1.0	41	0.3
<i>Townships</i>					
Amaranth	1,643	15	0.9	9	0.5
Garafraxa E.	1,143	2	0.2	1	0.1
Luther E.	885	8	0.9	2	0.2
Melancthon	2,147	14	0.7	2	0.1
Mono	2,138	37	1.7	4	0.2
Mulmer	1,673	19	1.1	11	0.7
<i>Towns</i>					
Orangeville	4,593	65	1.4	11	0.2
<i>Villages</i>					
Grand Valley	634	0	0	0	0
Shelburne	1,239	3	0.2	1	0.1

County	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
DUNDAS	17,162	1,696	9.9	739	4.3
<i>Townships</i>					
Matilda	3,117	224	7.2	40	1.3
Mountain	2,543	185	7.3	63	2.5
Williamsburg	3,000	235	7.8	80	2.7
Winchester	2,869	528	18.4	409	14.3
<i>Villages</i>					
Chesterville	1,248	158	12.7	65	5.2
Iroquois	1,136	107	9.4	37	3.2
Morrisburg	1,820	193	10.6	40	2.2
Winchester	1,429	66	4.6	5	0.3
DURHAM	39,916	1,031	2.6	232	0.6
<i>Townships</i>					
Cartwright	1,556	40	2.6	7	0.4
Cavan	2,216	60	2.7	15	0.7
Clarke	3,980	79	2.0	25	0.6
Darlington	9,601	248	2.6	61	0.6
Hope	2,849	59	2.1	18	0.6
Manvers	2,063	49	2.4	12	0.6
<i>Towns</i>					
Bowmanville	7,397	136	1.8	28	0.4
Port Hope	8,091	288	3.6	57	0.7
<i>Villages</i>					
Millbrook	891	18	2.0	3	0.3
Newcastle	1,272	54	4.2	6	0.5
ELGIN	62,862	1,853	2.9	484	0.8
<i>Townships</i>					
Aldborough	3,063	78	2.5	16	0.5
Bayham	4,044	78	1.9	38	0.9
Dorchester S.	1,426	8	0.6	2	0.1
Dunwich	2,197	53	2.4	11	0.5
Malahide	5,189	213	4.1	145	2.8
Southwold	4,115	64	1.6	10	0.2
Yarmouth	8,930	451	5.1	97	1.1
<i>Cities</i>					
St. Thomas	22,469	519	2.3	92	0.4
<i>Towns</i>					
Aylmer	4,705	187	4.0	51	1.1

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Villages</i>					
Belmont	649	17	2.6	0	0
Dutton	815	9	1.1	0	0
Port Burwell	777	59	7.6	8	1.0
Port Stanley	1,460	5	0.3	2	0.1
Rodney	1,041	66	6.3	5	0.5
Springfield	539	20	3.7	0	0
Vienna	373	11	2.9	2	0.5
West Lorne	1,070	15	1.4	5	0.5
 ESSEX	 258,218	 55,337	 21.4	 27,789	 10.8
<i>Townships</i>					
Anderdon	3,778	1,717	45.4	926	24.5
Colchester N.	2,288	816	35.7	427	18.7
Colchester S.	3,527	381	10.8	78	2.2
Gosfield N.	2,979	229	7.7	59	2.0
Gosfield S.	4,824	246	5.1	70	1.5
Maidstone	5,379	1,860	34.6	1,032	19.2
Malden	2,244	710	31.6	125	5.6
Mersea	7,824	286	3.7	95	1.2
Pelee	473	46	9.7	2	0.4
Rochester	2,715	1,467	54.0	1,157	42.6
Sandwich E.	21,819	6,369	29.2	3,298	15.1
Sandwich S.	4,535	703	15.5	263	5.8
Sandwich W.	28,613	6,526	22.8	3,178	11.1
Tilbury N.	2,180	1,609	73.8	1,404	64.4
Tilbury W.	1,606	545	33.9	372	23.2
<i>Cities</i>					
Windsor	114,367	20,601	18.0	9,591	8.4
<i>Towns</i>					
Amherstburg	4,452	1,220	27.4	266	6.0
Essex	3,428	331	9.7	91	2.7
Harrow	1,787	161	9.0	49	2.7
Kingsville	3,041	150	4.9	34	1.1
Leamington	9,030	382	4.2	106	1.2
Ojibway	6	0	0	0	0
Riverside	18,089	3,895	21.5	1,865	10.3
Tecumseh	4,476	2,504	55.9	1,561	34.9
Tilbury ¹	1,444	952	65.9	687	47.6

¹Total population
3,030, for other
part see Kent.

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Villages</i>					
Belle River	1,854	1,337	72.1	927	50.0
St. Clear Beach	1,460	294	20.1	126	8.6
FRONTENAC	87,534	6,353	7.3	1,714	2.0
<i>Townships</i>					
Barrie	409	45	11.0	0	0
Bedford	788	28	3.6	3	0.4
Clarendon & Miller	557	26	4.7	1	0.2
Hinchinbrooke	1,088	57	5.2	0	0
Howe Island	220	60	27.3	3	1.4
Kennebec	788	51	6.5	0	0
Kingston	10,442	578	5.5	149	1.4
Loughborough	2,107	83	3.9	4	0.2
Olden	728	54	7.4	1	0.1
Oso	1,141	131	11.5	8	0.7
Palmerston, N. & S. Canto	384	24	6.3	0	0
Pittsburgh	9,024	1,047	11.6	427	4.7
Portland	3,059	161	5.3	2	0.1
Storrington	2,105	122	5.8	7	0.3
Wolfe Island	1,169	80	6.8	0	0
<i>Cities</i>					
Kingston	53,526	3,806	7.1	1,109	2.1
GLENGARRY	19,217	11,061	57.6	9,133	47.5
<i>Townships</i>					
Charlottenburgh	5,784	3,055	52.8	2,027	35.0
Kenyon	2,821	1,340	47.5	1,125	39.9
Lancaster	3,100	2,049	66.1	1,864	60.1
Lochiel	3,527	2,100	59.5	1,938	54.9
<i>Towns</i>					
Alexandria	2,597	1,882	72.5	1,778	68.5
<i>Villages</i>					
Lancaster	584	320	54.8	233	39.9
Maxville	804	315	39.2	168	20.9
GRENVILLE	22,864	2,051	9.0	671	2.9
<i>Townships</i>					
Augusta	4,915	347	7.1	129	2.6
Edwardsburg	3,646	305	8.4	95	2.6

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Gower S.	680	95	14.0	21	3.1
Oxford-on-Rideau	2,338	160	6.8	37	1.6
Wolford	1,069	62	5.8	29	2.7
<i>Towns</i>					
Prescott	5,366	598	11.1	261	4.9
<i>Villages</i>					
Cardinal	1,944	223	11.5	27	1.4
Kemptville	1,959	172	8.8	51	2.6
Merrickville	947	89	9.4	21	2.2
 GREY	 62,005	 1,120	 1.8	 140	 0.2
<i>Townships</i>					
Artemesia	1,799	16	0.9	2	0.1
Bentinck	2,226	18	0.8	11	0.5
Collingwood	2,058	20	1.0	6	0.3
Derby	1,916	10	0.5	0	0
Egremont	1,939	23	1.2	4	0.2
Euphrasia	1,750	20	1.1	5	0.3
Glenelg	1,130	13	1.2	0	0
Holland	1,873	27	1.4	2	0.1
Keppel	1,938	26	1.3	3	0.2
Normanby	2,384	11	0.5	4	0.2
Osprey	1,617	15	0.9	0	0
Proton	1,655	13	0.8	3	0.2
St. Vincent	1,590	13	0.8	3	0.2
Sarawak	1,125	19	1.7	4	0.4
Sullivan	2,098	16	0.8	1	0.5
Sydenham	2,265	24	1.1	4	0.2
<i>Cities</i>					
Owen Sound	17,421	501	2.9	55	0.3
<i>Towns</i>					
Durham	2,180	47	2.2	0	0
Hanover	4,401	115	2.6	3	0.1
Meaford	3,834	86	2.2	19	0.5
Thornbury	1,097	46	4.2	8	0.7
<i>Villages</i>					
Chatsworth	419	3	0.7	1	0.2
Dundalk	852	4	0.5	0	0
Flesherton	515	6	1.2	1	0.2

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Markdale	1,090	15	1.4	1	0.1
Neustadt	493	8	1.6	0	0
Shallow Lake	340	5	1.5	0	0
HALDIMAND	28,197	683	2.4	154	0.5
<i>Townships</i>					
Canborough	1,114	21	1.9	2	0.2
Cayuga N.	1,525	66	4.3	11	0.7
Cayuga S.	587	8	1.4	3	0.5
Dunn	1,055	25	2.4	6	0.6
Moulton	2,160	43	2.0	23	1.1
Oneida	1,542	33	2.1	6	0.4
Rainham	1,790	37	2.1	2	0.1
Seneca	2,086	33	1.6	7	0.3
Sherbrooke	375	7	1.9	0	0
Walpole	4,083	105	2.6	27	0.7
Indian Reserves	746	2	0.3	1	0.1
<i>Towns</i>					
Caledonia	2,198	72	3.3	5	0.2
Dunnville	5,181	121	2.3	40	0.8
<i>Villages</i>					
Cayuga	897	29	3.2	1	0.1
Hagersville	2,075	69	3.3	16	0.8
Jarvis	783	12	1.5	4	0.5
HALIBURTON	8,928	449	5.0	197	2.2
<i>Townships</i>					
Anson, Hindon & Minden	1,899	48	2.5	12	0.6
Bircroft I.D.	881	163	18.5	113	12.8
Cardiff	516	48	9.3	20	3.9
Dysart ¹	2,802	104	3.7	31	1.1
Glamorgan	412	7	1.7	1	0.2
Lutterworth	309	19	6.1	1	0.3
Monmouth	660	13	2.0	4	0.6

¹Comprised of the townships of Bruton, Dysart, Clyde, Dudley, Erie, Guilford, Harburn, Harcourt and Havelock

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Sherborne ²	453	33	7.3	11	2.4
Snowden	471	8	1.7	2	0.4
Stanhope	525	6	1.1	2	0.4
² Comprised of the townships of Sherborne, McClintock and Lawrence, Livingstone, Nightingale.					
HALTON	106,697	3,478	3.3	1,136	1.1
<i>Townships</i>					
Esquesing	6,067	174	2.9	82	1.4
Nassagaweya	2,368	81	3.4	18	0.8
Trafalgar	31,743	1,079	3.4	363	1.1
<i>Towns</i>					
Acton	4,144	114	2.8	20	0.5
Burlington ¹	36,352	1,226	3.4	394	1.1
Georgetown	10,298	343	3.3	88	0.9
Milton	5,629	186	3.3	30	0.5
Oakville	10,366	275	2.7	141	1.4
¹ Total population 47,008, for other part see Wentworth.					
HASTINGS	93,377	7,210	7.7	2,013	2.2
<i>Townships</i>					
Bangor, McClure & Wicklow	963	83	8.6	6	0.6
Carlow	420	28	6.7	6	1.4
Dungannon	1,113	64	5.7	17	1.5
Elzevir & Grimsthorpe	670	161	24.0	16	2.4
Faraday	1,570	290	18.5	195	12.4
Herschel	652	46	7.1	2	0.3
Hungerford	2,428	583	24.0	8	0.3
Huntingdon	1,508	83	5.5	4	0.3
Limerick	336	4	1.2	2	0.6
Madoc	1,697	70	4.1	4	0.2
Marmora & Lake	1,360	132	9.7	11	0.8
Mayo	425	13	3.1	3	0.7
Monteagle	1,200	95	7.9	13	1.1
Rawdon	2,151	70	3.3	2	0.1
Sidney	11,397	1,015	8.9	509	4.5

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Thurlow	4,888	231	4.7	28	0.6
Tudor & Cashel	568	28	4.9	2	0.4
Tyendinaga	2,548	77	3.0	8	0.3
Wollaston	731	12	1.6	1	0.1
Indian Reserves	869	0	0	0	0
<i>Cities</i>					
Belleville	30,655	1,762	5.7	393	1.3
<i>Towns</i>					
Deseronto	1,797	100	5.6	23	1.3
Trenton	13,183	1,281	9.7	497	3.8
<i>Villages</i>					
Bancroft	2,615	268	10.2	176	6.7
Deloro	157	18	11.5	0	0
Frankford	1,642	61	3.7	2	0.1
Madoc	1,347	94	7.0	10	0.7
Marmora	1,381	75	5.4	16	1.2
Stirling	1,315	23	1.7	6	0.5
Tweed	1,791	443	24.7	53	3.0
HURON	53,805	2,236	4.2	938	1.7
<i>Townships</i>					
Ashfield	1,688	32	1.9	9	0.5
Colborne	1,233	29	2.4	9	0.7
Goderich	1,824	35	1.9	9	0.5
Grey	1,909	25	1.3	4	0.2
Hay	2,002	322	16.1	158	7.9
Howick	2,758	23	0.8	0	0
Hullett	1,953	21	1.1	8	0.4
McKillop	1,610	16	1.0	7	0.4
Morris	1,585	8	0.5	3	0.2
Stanley	2,836	288	10.2	201	7.1
Stephen	4,545	419	9.2	199	4.4
Tuckersmith	3,217	183	5.7	60	1.9
Turnberry	1,406	17	1.2	1	0.1
Usborne	1,552	7	0.5	1	0.1
Wawanosh E.	1,167	7	0.6	2	0.2
Wawanosh W.	1,177	5	0.4	6	0.5
<i>Towns</i>					
Clinton	3,491	187	5.4	86	2.5
Exeter	3,047	74	2.4	30	1.0
Goderich	6,411	253	3.9	75	1.2
Seaforth	2,255	73	3.2	13	0.6
Wingham	2,922	60	2.1	5	0.2

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Villages</i>					
Blyth	724	2	0.3	1	0.1
Brussels	844	3	0.4	1	0.1
Hensal	926	32	3.5	10	1.1
Zurich	723	115	15.9	40	5.5
 KENORA	 51,474	 4,799	 9.3	 2,214	 4.3
<i>Townships</i>					
Ignace	735	66	9.0	42	5.7
Jaffray & Melick	2,537	415	16.4	171	6.7
Machin	1,119	84	7.5	64	5.7
Sioux Narrows I.D.	433	89	20.6	21	4.8
Unorganized	9,801	1,203	12.3	568	5.8
Indian Reserves	3,226	21	0.6	19	0.6
<i>Towns</i>					
Dryden	5,728	536	9.4	302	5.3
Keewatin	2,197	246	11.2	106	4.8
Kenora	10,904	1,253	11.5	453	4.2
Sioux Lookout	2,453	211	8.6	64	2.6
<i>Patricia Portion</i>					
Balmertown I.D.	1,590	209	13.1	114	7.2
Red Lake	2,419	212	8.8	95	3.9
Unorganized	8,332	254	3.0	195	2.3
 KENT	 89,427	 11,014	 12.3	 4,613	 5.2
<i>Townships</i>					
Camden	2,374	101	4.3	40	1.7
Chatham	8,659	1,065	12.3	303	3.5
Dover	4,559	2,200	48.3	1,768	38.8
Harwich	6,497	419	6.4	121	1.9
Howard	2,769	192	6.9	39	1.4
Orford	1,768	71	4.0	12	0.7
Raleigh	5,270	373	7.1	90	1.7
Romney	1,630	196	12.0	113	6.9
Tilbury E.	2,879	680	23.6	354	12.3
Zone	1,097	123	11.2	48	4.4
Indian Reserves	289	1	0.3	0	0
<i>Cities</i>					
Chatham	29,826	3,054	10.2	909	3.0
<i>Towns</i>					
Blenheim	3,151	138	4.4	42	1.3
Bothwell	819	25	3.1	7	0.9

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Dresden	2,346	64	2.7	3	0.1
Ridgetown	2,603	116	4.5	32	1.2
Tilbury ¹	1,586	628	39.6	399	25.2
Wallaceburg	7,881	1,366	17.3	289	3.7
<i>Villages</i>					
Erie Beach	137	5	3.6	1	0.7
Eriean	497	50	10.1	7	1.4
Highgate	374	18	4.8	3	0.8
Thamesville	1,054	86	8.2	24	2.3
Wheatley	1,362	43	3.2	9	0.7

¹Total population 3,030, for other part see Essex.

LAMBTON	102,131	7,448	7.3	3,542	3.5
<i>Townships</i>					
Bosanquet	3,221	175	5.4	48	1.5
Brooke	2,117	93	4.4	58	2.7
Dawn	1,897	90	4.7	9	0.5
Enniskillen	2,896	187	6.5	125	4.3
Euphemia	1,296	42	3.2	15	1.2
Moore	5,722	377	6.6	121	2.1
Plympton	3,259	62	1.9	16	0.5
Sarnia	8,040	367	4.6	113	1.4
Sombra	3,564	493	13.8	103	2.9
Warwick	2,346	34	1.4	16	0.7
Indian Reserves	2,117	41	1.9	25	1.2
<i>Cities</i>					
Sarnia	50,976	4,710	9.2	2,682	5.3
<i>Towns</i>					
Forest	2,188	85	3.9	21	1.0
Petrolia	3,708	160	4.3	40	1.1
<i>Villages</i>					
Alvinston	660	11	1.7	1	0.2
Arkona	504	24	4.8	10	2.0
Courtright	532	43	8.1	8	1.5
Grand Bend	928	137	14.8	26	2.8
Oil Springs	484	14	2.9	0	0
Point Edward	2,744	198	7.2	92	3.4
Thedford	759	63	8.3	10	1.3
Watford	1,293	28	2.2	0	0
Wyoming	880	14	1.6	3	0.3

County	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
LANARK	40,313	2,636	6.5	823	2.0
<i>Townships</i>					
Bathurst	1,885	73	3.9	19	1.0
Beckwith	1,169	57	4.9	23	2.0
Burgess N.	462	14	3.0	3	0.6
Dalhousie and Sherbrooke N.	869	38	4.4	1	0.1
Darling	325	83	25.5	9	2.8
Drummond	1,428	20	1.4	6	0.4
Elmsley N.	1,048	54	5.2	24	2.3
Lanark	873	38	4.4	2	0.2
Lavant	261	37	14.2	4	1.5
Montague	4,654	770	16.5	436	9.4
Pakenham	1,143	34	3.0	13	1.1
Ramsay	1,672	60	3.6	13	0.8
Sherbrooke S.	580	12	2.1	1	0.2
<i>Towns</i>					
Almonte	3,267	266	8.1	52	1.6
Carleton Place	4,796	270	5.6	55	1.1
Perth	5,360	216	4.0	41	0.8
Smiths Falls	9,603	504	5.2	120	1.2
<i>Villages</i>					
Lanark	918	90	9.8	1	0.1
LEEDS	46,889	3,357	7.2	1,199	2.6
<i>Townships</i>					
Bastard & Burgess S.	2,401	88	3.7	25	1.0
Crosby N.	663	39	5.9	0	0
Crosby S.	1,314	47	3.6	4	0.3
Elizabethtown	6,557	790	12.0	553	8.4
Elmsley S.	1,019	48	4.7	9	0.9
Escott Front	976	47	4.8	5	0.5
Kitley	1,624	63	3.9	8	0.5
Leeds & Lansdowne Front	3,055	151	4.9	19	0.6
Leeds & Lansdowne Rear	1,963	36	1.8	8	0.4
Yonge Front	1,497	46	3.1	20	1.3
Yonge & Escott Rear	953	18	1.9	4	0.4
<i>Towns</i>					
Brockville	17,744	1,430	8.1	506	2.9
Gananoque	5,096	477	9.4	31	0.6

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Villages</i>					
Athens	1,015	33	3.3	4	0.4
Newboro	301	18	6.0	1	0.3
Westport	711	26	3.7	2	0.3
 LENNOX AND ADDINGTON	 23,717	 1,030	 4.3	 130	 0.5
<i>Townships</i>					
Adolphustown	509	29	5.7	0	0
Amherst Island	441	13	2.9	0	0
Camden E.	3,196	96	3.0	2	0.1
Denbigh, Abinger & Ashley	701	55	7.8	13	1.9
Ernestown	5,704	260	4.6	58	1.0
Fredericksburgh N.	1,713	25	1.5	1	0.1
Fredericksburgh S.	848	19	2.2	4	0.5
Kaladar, Anglesea & Effingham	1,405	199	14.2	13	0.9
Richmond	2,242	73	3.3	3	0.1
Sheffield	1,196	64	5.4	2	0.2
<i>Towns</i>					
Napanee	4,500	110	2.4	10	0.2
<i>Villages</i>					
Bath	693	57	8.2	19	2.7
Newburgh	569	30	5.3	5	0.9
 LINCOLN	 126,674	 5,933	 4.7	 2,454	 1.9
<i>Townships</i>					
Caistor	1,670	12	0.7	1	0.1
Clinton	5,825	113	1.9	31	0.5
Gainsborough	2,532	49	1.9	24	0.9
Grimsby N.	5,757	134	2.3	22	0.4
Grimsby S.	2,319	24	1.0	9	0.4
Louth	5,086	129	2.5	49	1.0
Niagara	8,616	241	2.8	106	1.2
<i>Cities</i>					
St. Catharines	84,472	4,939	5.8	2,133	2.5
<i>Towns</i>					
Grimsby	5,148	141	2.7	38	0.7
Niagara	2,712	84	3.1	23	0.8
<i>Villages</i>					
Beamsville	2,537	67	2.6	18	0.7

County	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
MANITOULIN	11,176	553	4.9	90	0.8
<i>Townships</i>					
Assiginack ¹	805	22	2.7	10	1.2
Barrie Island	146	0	0	0	0
Billings	385	0	0	0	0
Burpee	301	1	0.3	0	0
Carnarvon	995	32	3.2	1	0.1
Cockburn Island	66	10	15.2	2	3.0
Gordon	490	6	1.2	1	0.2
Howland ²	770	13	1.7	0	0
Rutherford & George Island	484	240	49.6	14	2.9
Sandfield	178	5	2.8	0	0
Tehkummah	473	13	2.7	0	0
Unorganized	1,075	26	2.4	15	1.4
Indian Reserves	2,765	20	0.7	13	0.5
<i>Towns</i>					
Gore Bay	716	14	2.0	0	0
Little Current	1,527	151	9.9	34	2.2
¹ Comprised of the townships of Assiginack, Bidwell (part) and Sheguiandah (part).					
² Comprised of the townships of Howland, Bidwell (part) and Sheguiandah (part).					
MIDDLESEX	221,422	6,703	3.0	1,940	0.9
<i>Townships</i>					
Adelaide	1,798	24	1.3	3	0.2
Biddulph	1,832	20	1.1	8	0.4
Caradoc	4,320	68	1.6	23	0.5
Delaware	1,935	62	3.2	9	0.5
Dorchester N.	5,370	139	2.6	14	0.3
Ekfrid	1,922	41	2.1	12	0.6
Lobo	2,621	48	1.8	13	0.5
London	5,885	112	1.9	37	0.6
McGillivray	1,824	40	2.2	5	0.3
Metcalf	892	20	2.2	11	1.2
Mosa	1,321	47	3.6	15	1.1
Nissouri W.	3,042	65	2.1	17	0.6
Westminster	5,829	155	2.7	39	0.7

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Williams E.	1,052	37	3.5	1	0.1
Williams W.	957	24	2.5	6	0.6
Indian Reserves	1,565	1	0.1	0	0
<i>Cities</i>					
London	169,569	5,569	3.3	1,656	1.0
<i>Towns</i>					
Parkhill	1,169	42	3.6	14	1.2
Strathroy	5,150	101	2.0	28	0.5
<i>Villages</i>					
Ailsa Craig	554	13	2.3	1	0.2
Glencoe	1,156	33	2.9	11	1.0
Lucan	986	14	1.4	5	0.5
Newbury	328	24	7.3	10	3.0
Wardsville	345	4	1.2	2	0.6
 MUSKOKA	 26,705	 1,590	 6.0	 456	 1.7
<i>Townships</i>					
Brunel	1,055	26	2.5	9	0.9
Cardwell	121	7	5.8	2	1.7
Chaffey	2,393	56	2.3	5	0.2
Draper	505	8	1.6	2	0.4
Franklin	706	26	3.7	6	0.8
Freeman	983	83	8.4	12	1.2
Macaulay	836	9	1.1	2	0.2
McLean	437	6	1.4	4	0.9
Medora & Wood	1,393	116	8.3	3	0.2
Monck	1,218	24	2.0	1	0.1
Morrison	803	23	2.9	1	0.1
Muskoka	1,890	85	4.5	12	0.6
Oakley	178	7	3.9	0	0
Ridout	229	5	2.2	0	0
Ryde	206	20	9.7	1	0.5
Stephenson	817	23	2.8	10	1.2
Stisted	265	12	4.5	4	1.5
Watt	661	15	2.3	3	0.5
Unorganized	1,311	714	54.5	295	22.5
Indian Reserves	152	6	3.9	2	1.3
<i>Towns</i>					
Bala	495	11	2.2	6	1.2
Bracebridge	2,927	76	2.6	20	0.7
Gravenhurst	3,077	105	3.4	24	0.8
Huntsville	3,189	106	3.3	28	0.9

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Villages</i>					
Port Carling	529	14	2.6	2	0.4
Port Sydney	192	3	1.6	2	1.0
Windermere	137	4	2.9	0	0
 NIPISSING	 70,568	 30,793	 43.6	 25,408	 36.0
<i>Townships</i>					
Bonfield	997	657	65.9	618	62.0
Caldwell	1,854	1,789	96.5	1,783	96.2
Calvin	513	144	28.1	86	16.8
Cameron I.D.	185	62	33.5	43	23.2
Chisholm	935	587	62.8	531	56.8
Ferris E.	1,808	1,393	77.0	1,320	73.0
Ferris W.	5,048	820	16.2	400	7.9
Field	1,092	1,013	92.8	1,002	91.8
Mattawan	105	43	41.0	28	26.7
Papineau	716	437	61.0	387	54.1
Springer	1,571	1,278	81.3	1,241	79.0
Widdifield	12,063	3,741	31.0	2,472	20.5
Unorganized	8,369	4,221	50.4	3,408	40.7
Indian Reserves	405	16	4.0	12	3.0
<i>Cities</i>					
North Bay	23,781	6,292	26.5	4,434	18.6
<i>Towns</i>					
Bonfield	714	627	87.8	607	85.0
Cache Bay	810	653	80.6	600	74.1
Mattawa	3,314	2,177	65.7	1,755	53.0
Sturgeon Falls	6,208	4,843	78.0	4,681	75.4
 NORFOLK	 50,475	 1,283	 2.5	 392	 0.8
<i>Townships</i>					
Charlotteville	5,380	130	2.4	41	0.8
Houghton	2,276	63	2.8	27	1.2
Middleton	3,917	83	2.1	33	0.8
Townsend	5,421	98	1.8	18	0.3
Walsingham N.	2,920	64	2.2	42	1.4
Walsingham S.	2,431	64	2.6	4	0.2
Windham	5,885	135	2.3	60	1.0
Woodhouse	3,992	128	3.2	37	0.9
<i>Towns</i>					
Delhi	3,427	65	1.9	41	1.2
Port Dover	3,064	109	3.6	30	1.0

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Simcoe	8,754	280	3.2	51	0.6
Waterford	2,221	48	2.2	6	0.3
<i>Villages</i>					
Port Rowan	787	16	2.0	2	0.3
NORTHUMBER-					
LAND	41,892	1,604	3.8	322	0.8
<i>Townships</i>					
Alnwick	611	2	0.3	0	0
Brighton	2,451	86	3.5	13	0.5
Cramahe	2,124	58	2.7	20	0.9
Haldimand	2,803	62	2.2	30	1.1
Hamilton	5,057	136	2.7	34	0.7
Monaghan S.	733	7	1.0	0	0
Murray	4,558	253	5.6	26	0.6
Percy	2,090	44	2.1	6	0.3
Seymour	2,546	94	3.7	6	0.2
Indian Reserves	159	0	0	0	0
<i>Towns</i>					
Campbellford	3,478	144	4.1	12	0.3
Cobourg	10,646	559	5.3	136	1.3
<i>Villages</i>					
Brighton	2,403	85	3.5	30	1.2
Colborne	1,336	27	2.0	4	0.3
Hastings	897	47	5.2	5	0.6
ONTARIO	135,895	5,401	4.0	2,063	1.5
<i>Townships</i>					
Brock	3,007	54	1.8	13	0.4
Mara	2,495	133	5.3	4	0.2
Pickering	17,201	624	3.6	208	1.2
Rama	916	38	4.1	6	0.7
Reach	3,129	73	2.3	19	0.6
Scott	1,918	24	1.3	8	0.4
Scugog	427	10	2.3	3	0.7
Thorah	1,106	41	3.7	2	0.2
Uxbridge	2,879	93	3.2	7	0.2
Whitby	6,312	194	3.1	66	1.0
Whitby E.	2,683	95	3.5	14	0.5
Indian Reserves	393	5	1.3	1	0.3
<i>Cities</i>					
Oshawa	62,415	2,946	4.7	1,382	2.2

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Towns</i>					
Ajax	7,755	330	4.3	129	1.7
Uxbridge	2,316	38	1.6	9	0.4
Whitby	14,685	551	3.8	124	0.8
<i>Villages</i>					
Beaverton	1,217	41	3.4	17	1.4
Cannington	1,024	6	0.6	0	0
Pickering	1,755	53	3.0	30	1.7
Port Perry	2,262	52	2.3	11	0.5
OXFORD	70,499	1,668	2.4	474	0.7
<i>Townships</i>					
Blandford	1,572	43	2.7	2	0.1
Blenheim	4,451	91	2.0	18	0.4
Dereham	4,324	82	1.9	21	0.5
Nissouri E.	2,810	32	1.1	9	0.3
Norwich N.	2,330	32	1.4	1	0
Norwich S.	3,055	49	1.6	17	0.6
Oxford E.	2,502	45	1.8	0	0
Oxford N.	1,767	34	1.9	5	0.3
Oxford W.	3,422	71	2.1	18	0.5
Zorra E.	5,331	267	5.0	109	2.0
Zorra W.	2,158	40	1.9	12	0.6
<i>Cities</i>					
Woodstock	20,486	460	2.2	149	0.7
<i>Towns</i>					
Ingersoll	6,874	174	2.5	40	0.6
Tillsonburg	6,600	187	2.8	59	0.9
<i>Villages</i>					
Embro	552	1	0.2	0	0
Norwich	1,703	36	2.1	13	0.8
Tavistock ¹	562	24	4.3	1	0.2
¹ Total population 1,232, for other part see Perth.					
PARRY SOUND	29,632	3,110	10.5	1,009	3.4
<i>Townships</i>					
Armour	788	36	4.6	3	0.4
Carling	369	25	6.8	6	1.6
Chapman	320	4	1.3	0	0
Christie	277	3	1.1	1	0.4
Foley	811	45	5.5	7	0.9

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Hagerman	388	5	1.3	1	0.3
Himsworth N.	1,845	560	30.4	298	16.2
Himsworth S.	1,029	84	8.2	40	3.9
Humphrey	453	17	3.8	6	1.3
Joly	127	3	2.4	2	1.6
Machar	358	45	12.6	10	2.8
McDougall	2,219	285	12.8	91	4.1
McKellar	437	7	1.6	0	0
McMurrich	406	21	5.2	3	0.7
Nipissing	649	62	9.6	21	3.2
Perry	980	26	2.7	10	1.0
Ryerson	472	31	6.6	2	0.4
Strong	733	8	1.1	1	0.1
Unorganized	5,309	1,088	20.5	366	6.9
Indian Reserves	555	2	0.4	4	0.7
<i>Towns</i>					
Kearney	365	51	14.0	4	1.1
Parry Sound	6,004	450	7.5	89	1.5
Powassan	1,064	88	8.3	20	1.9
Trout Creek	510	20	3.9	6	1.2
<i>Villages</i>					
Burk's Falls	926	50	5.4	5	0.5
Magnetawan	205	8	3.9	1	0.5
Rosseau	233	27	11.6	2	0.9
South River	1,044	39	3.7	5	0.5
Sundridge	756	20	2.6	5	0.7
PEEL	111,575	3,426	3.1	1,256	1.1
<i>Townships</i>					
Albion	3,048	93	3.1	27	0.9
Caledon	3,741	50	1.3	12	0.3
Chinguacousy	7,571	133	1.8	36	0.5
Toronto	62,616	2,135	3.4	838	1.3
Toronto Gore	1,115	46	4.1	15	1.3
<i>Towns</i>					
Brampton	18,467	452	2.4	174	0.9
Port Credit	7,203	277	3.8	107	1.5
<i>Villages</i>					
Bolton	2,104	65	3.1	12	0.6
Caledon E.	654	25	3.8	6	0.9
Streetsville	5,056	150	3.0	29	0.6

County	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
PERTH	57,452	1,452	2.5	199	0.3
<i>Townships</i>					
Blanshard	1,991	17	0.9	4	0.2
Downie	2,595	48	1.8	10	0.4
Easthope N.	2,116	33	1.6	8	0.4
Easthope S.	1,646	23	1.4	6	0.4
Ellice	2,704	125	4.6	7	0.3
Elma	3,323	69	2.1	1	0.3
Fullarton	1,555	12	0.8	5	0.3
Hibbert	1,636	25	1.5	8	0.5
Logan	2,262	13	0.6	3	0.1
Mornington	2,509	274	10.9	2	0.1
Wallace	2,136	16	0.7	0	0
<i>Cities</i>					
Stratford	20,467	528	2.6	115	0.6
<i>Towns</i>					
Listowel	4,002	85	2.1	8	0.2
Mitchell	2,247	52	2.3	3	0.1
St. Mary's	4,487	75	1.7	12	0.3
<i>Villages</i>					
Milverton	1,111	42	3.8	6	0.5
Tavistock ¹	670	15	2.2	1	0.1
¹ Total population 1,232, for other part see Oxford.					
PETERBOROUGH	76,375	3,315	4.3	468	0.6
<i>Townships</i>					
Asphodel	1,440	23	1.6	4	0.3
Belmont & Methuen	1,735	57	3.3	8	0.5
Burleigh & Anstruther	975	32	3.3	6	0.6
Chandos	441	19	4.3	1	0.2
Douro	3,139	137	4.4	18	0.6
Dummer	1,495	25	1.7	0	0
Ennismore	619	27	4.4	2	0.3
Galway and Cavendish	270	1	0.4	0	0
Harvey	885	55	6.2	2	0.2
Monaghan N.	3,875	159	4.1	14	0.4
Otonabee	4,629	189	4.1	36	0.8
Smith	4,724	189	4.0	20	0.4
Indian Reserves	476	2	0.4	2	0.4
<i>Cities</i>					
Peterborough	47,185	2,272	4.8	331	0.7

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Villages</i>					
Havelock	1,260	52	4.1	6	0.5
Lakefield	2,167	44	2.0	18	0.8
Norwood	1,060	32	3.0	0	0
 PRESCOTT	 27,226	 22,773	 83.6	 22,491	 82.6
<i>Townships</i>					
Alfred	1,923	1,844	95.9	1,842	95.8
Caledonia	1,407	1,152	81.9	1,138	80.9
Hawkesbury E.	3,163	2,492	78.8	2,524	79.8
Hawkesbury W.	1,793	1,104	61.6	1,053	58.7
Longueuil	933	796	85.3	791	84.8
Plantagenet N.	2,834	2,512	88.6	2,528	89.2
Plantagenet S.	2,393	2,004	83.7	1,958	81.8
<i>Towns</i>					
Hawkesbury	8,661	7,627	88.1	7,547	87.1
Vankleek Hill	1,735	1,060	61.1	979	56.4
<i>Villages</i>					
Alfred	1,195	1,108	92.7	1,084	90.7
L'Orignal	1,189	1,074	90.3	1,047	88.1
 PRINCE EDWARD	 21,108	 968	 4.6	 183	 0.9
<i>Townships</i>					
Ameliasburgh	3,912	227	5.8	24	0.6
Athol	1,069	36	3.4	5	0.5
Hallowell	4,332	247	5.7	88	2.0
Hillier	1,432	53	3.7	3	0.2
Marysburgh N.	1,072	10	0.9	0	0
Marysburgh S.	889	26	2.9	9	1.0
Sophiasburgh	1,673	63	3.8	7	0.4
<i>Towns</i>					
Picton	4,862	252	5.2	46	0.9
<i>Villages</i>					
Bloomfield	803	21	2.6	1	0.1
Wellington	1,064	33	3.1	0	0
 RAINY RIVER	 26,531	 2,799	 10.5	 1,085	 4.1
<i>Townships</i>					
Alberton ¹	491	69	14.1	32	6.5
Atikokan	7,093	789	11.1	328	4.6

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Atwood	417	68	16.3	18	4.3
Blue	143	7	4.9	7	4.9
Chapple ²	1,196	23	1.9	12	1.0
Dilke	276	153	55.4	140	50.7
Emo ³	1,111	71	6.4	15	1.4
Kingsford I.D.	95	11	11.6	2	2.1
LaVellee ⁴	950	60	6.3	21	2.2
McCrosson & Tovell	306	7	2.3	1	0.3
Morley	633	49	7.7	11	1.7
Morson	229	33	14.4	4	1.7
Worthington	194	23	11.9	13	6.7
Unorganized	1,704	249	14.6	86	5.0
Indian Reserves	1,043	16	1.5	16	1.5
<i>Towns</i>					
Fort Frances	9,481	1,011	10.7	302	3.2
Rainy River	1,168	160	13.7	77	6.6

¹Comprised of the townships of Grozier and Roddick.

²Comprised of the townships of Shenston, Dobie, Mather, Barwick, Roseberry, Tait, Potts and Richardson.

³Comprised of the townships of Aylsworth, Lash and Carpenter.

⁴Comprised of the townships of Burriss, Devlin and Woodyatt.

RENFREW	89,635	14,044	15.7	5,498	6.1
<i>Townships</i>					
Admaston	1,325	102	7.7	16	1.2
Algona N.	551	21	3.8	2	0.4
Algona S.	373	1	0.3	0	0
Alice & Fraser	2,083	307	14.7	139	6.7
Bagot & Blythfield	1,013	170	16.8	30	3.0
Bromley	1,447	86	5.9	23	1.6
Brougham	288	32	11.1	3	1.0
Brudenell & Lyndoch	999	9	0.9	0	0
Gratton	1,326	189	14.3	64	4.8
Griffith & Matawatchan	411	100	24.3	17	4.1
Hagarty & Richards	1,638	65	4.0	7	0.4
Head, Clara & Maria	549	285	51.9	110	20.0
Horton	1,610	150	9.3	27	1.7
McNab	3,288	418	12.7	99	3.0
Pembroke	956	198	20.7	84	8.8
Petawawa	9,330	1,366	14.6	613	6.6
Radcliffe	728	60	8.2	16	2.2
Raglan	734	18	2.5	1	0.1

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Rolph, Buchanan, Wylie & McKay	2,079	741	35.6	388	18.7
Ross	1,660	111	6.7	45	2.7
Sebastopol	1,040	120	11.5	70	6.7
Sherwood, Jones & Burns	1,301	14	1.1	4	0.3
Stafford	3,131	301	9.6	402	12.8
Westmeath	1,972	500	25.4	270	13.7
Wilberforce	1,409	13	0.9	2	0.1
Indian Reserves	241	9	3.7	2	0.8
<i>Towns</i>					
Arnprior	5,474	769	14.0	224	4.1
Deep River	5,377	580	10.8	217	4.0
Pembroke	16,791	4,256	25.3	1,742	10.4
Renfrew	8,935	1,421	15.9	247	2.8
<i>Villages</i>					
Barry's Bay	1,439	53	3.7	3	0.2
Beachburg	542	18	3.3	2	0.4
Braeside	528	139	26.3	89	16.9
Chalk River	1,135	291	25.6	135	11.9
Cobden	942	64	6.8	10	1.1
Eganville	1,549	129	8.3	27	1.7
Killaloe Station	932	26	2.8	0	0
Petawawa	4,509	912	20.2	368	8.2
RUSSELL	20,892	15,293	73.2	16,166	77.4
<i>Townships</i>					
Cambridge	2,510	2,442	97.3	2,429	96.8
Clarence	4,727	3,948	83.5	4,270	90.3
Cumberland	5,478	2,899	52.9	2,897	52.9
Russell	3,863	2,790	72.2	2,743	71.0
<i>Towns</i>					
Rockland	3,037	1,993	65.6	2,630	86.6
<i>Villages</i>					
Casselman	1,277	1,221	95.6	1,197	93.7
SIMCOE	141,271	15,022	10.6	7,552	5.3
<i>Townships</i>					
Adjala	1,628	47	2.9	15	0.9
Essa	13,753	1,520	11.1	754	5.5
Flos	2,500	149	6.0	67	2.7
Gwillimbury W.	2,642	36	1.4	10	0.4

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Innisfil	6,987	249	3.6	75	1.1
Matchedash	381	34	8.9	0	0
Medonte	2,362	128	5.4	72	3.0
Nottawasaga	4,271	70	1.6	10	0.2
Orillia	10,054	538	5.4	60	0.6
Oro	4,284	135	3.2	45	1.1
Sunnidale	2,866	64	2.2	27	0.9
Tay	3,670	680	18.5	204	5.6
Tecumseh	3,209	56	1.7	14	0.4
Tiny	4,430	2,859	64.5	2,446	55.2
Tosorontio	1,886	45	2.4	22	1.2
Vespra	3,489	192	5.5	58	1.7
Indian Reserves	396	0	0	1	0.3
<i>Cities</i>					
Barrie	21,169	895	4.2	335	1.6
<i>Towns</i>					
Alliston	2,884	104	3.6	53	1.8
Bradford	2,342	60	2.6	34	1.5
Collingwood	8,385	170	2.0	33	0.4
Midland	8,656	1,912	22.1	614	7.1
Orillia	15,345	663	4.3	125	0.8
Penetanguishene	5,340	3,514	65.8	2,357	44.1
Stayner	1,671	24	1.4	1	0.1
<i>Villages</i>					
Beeton	810	20	2.5	6	0.7
Coldwater	726	24	3.3	1	0.2
Creemore	850	16	1.9	6	0.7
Elmvale	957	34	3.6	18	1.9
Port McNicoll	1,053	224	21.3	61	5.8
Tottenham	778	32	4.1	10	1.3
Victoria Harbour	1,066	505	47.4	10	0.9
Wasaga Beach	431	23	5.3	8	1.9
STORMONT	57,867	27,672	47.8	21,206	36.6
<i>Townships</i>					
Cornwall	4,340	1,415	32.6	661	15.2
Finch	2,413	1,132	46.9	984	40.8
Osnabruck	3,404	367	10.8	101	3.0
Roxborough	3,108	1,222	39.3	937	30.1
Indian Reserves	577	0	0	1	0.2
<i>Cities</i>					
Cornwall	43,639	23,452	53.7	18,496	42.4

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Villages</i>					
Finch	386	84	21.8	26	6.7
SUDBURY	165,862	65,129	39.3	54,940	33.1
<i>Townships</i>					
Baldwin	505	271	53.7	221	43.8
Balfour	1,907	1,171	61.4	1,096	57.5
Bleazard	4,615	2,939	63.7	2,672	57.9
Capreol	2,348	1,435	61.1	1,340	57.1
Casimir, Jennings & Appleby	1,124	1,007	89.6	985	87.6
Chapleau	3,785	1,733	45.8	1,445	38.2
Cosby, Mason & Martland	1,686	1,541	91.4	1,502	89.1
Dowling	1,436	592	41.2	479	33.4
Drury, Denison & Graham	1,836	423	23.0	305	16.6
Falconbridge	1,349	175	13.0	84	6.2
Hagar	828	506	61.1	444	53.6
Hallam	203	56	27.6	29	14.3
Hanmer	4,007	2,797	69.8	2,646	66.0
Nairn	298	62	20.8	34	11.4
Neelon & Garson	5,286	1,712	32.4	1,256	23.8
Onaping I.D.	1,106	220	19.9	129	11.7
Ratter & Dunnet	1,386	1,016	73.3	1,006	72.6
Rayside	4,820	3,364	69.8	3,173	65.8
Renabie I.D.	423	118	27.9	97	22.9
Salter, May & Harrow	636	137	21.5	79	12.4
Waters	2,064	275	13.3	170	8.2
Unorganized	18,301	7,479	40.9	6,176	33.7
Indian Reserves	327	0	0	0	0
<i>Cities</i>					
Sudbury	80,120	27,340	34.1	23,337	29.1
<i>Towns</i>					
Capreol	3,003	692	23.0	408	13.6
Chelmsford	2,559	2,051	80.1	1,979	77.3
Coniston	2,692	1,096	40.7	825	30.6
Copper Cliff	3,600	374	10.4	165	4.6
Espanola	5,353	2,479	46.3	1,646	30.7
Levack	3,178	886	27.9	623	19.6
Lively	3,211	539	16.8	249	7.8
Massey	1,324	538	40.6	314	23.7
Webbwood	546	108	19.8	26	4.8

County	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
THUNDER BAY	138,518	12,692	9.2	6,142	4.4
<i>Townships</i>					
Beardmore I.D.	1,305	282	21.6	202	15.5
Conmee	323	6	1.9	0	0
Dorion	557	85	15.3	45	8.1
Gillies	425	5	1.2	4	0.9
Longlac I.D.	1,144	474	41.4	404	35.3
Manitouwadge I.D.	2,635	680	25.8	609	23.1
Marathon I.D.	2,568	526	20.5	342	13.3
Nakina I.D.	892	126	14.1	85	9.5
Neebing ¹	4,404	247	5.6	68	1.5
Nipigon	2,618	482	18.4	171	6.5
O'Connor	375	7	1.9	1	0.3
Oliver	1,269	71	5.6	28	2.2
Paipoonge	2,145	106	4.9	29	1.4
Red Rock I.D.	1,861	510	27.4	261	14.0
Schreiber	2,230	329	14.8	134	6.0
Shuniah ²	5,667	530	9.4	163	2.9
Terrace Bay	2,013	396	19.7	103	5.1
Unorganized	9,561	1,385	14.5	955	10.0
Indian Reserves	2,661	0	0	0	0
<i>Cities</i>					
Fort William	45,214	2,363	5.2	753	1.7
Port Arthur	45,276	3,244	7.2	1,175	2.6
<i>Towns</i>					
Geraldton	3,375	838	24.8	710	21.0
¹ Comprised of the townships of Blake, Pardee and Neebing.					
² Comprised of the townships of McIntyre, McGregor and McTavish.					
TIMISKAMING	50,971	15,637	30.7	13,617	26.7
<i>Townships</i>					
Armstrong	1,203	1,048	87.1	1,030	85.6
Brethour	296	166	56.1	149	50.3
Bucke	1,774	261	14.7	652	36.8
Casey	679	613	90.3	598	88.1
Chamberlain	429	89	20.7	54	12.6
Coleman	712	242	34.0	147	20.6
Dack	507	44	8.7	27	5.3
Dymond	934	431	46.1	328	35.1
Evanturel	714	178	24.9	140	19.6

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Gauthier I.D.	297	60	20.2	39	13.1
Harley	534	151	28.3	139	26.0
Harris	337	108	32.0	95	28.2
Hilliard	398	173	43.5	161	40.5
Hudson	379	162	42.7	156	41.2
James	701	377	53.8	315	44.9
Kerns	516	117	22.7	98	19.0
Kingham ¹	52	6	11.5	4	7.7
Larder Lake	2,187	822	37.6	711	32.5
McGarry I.D.	2,998	983	32.8	888	29.6
Matachewan	1,031	700	67.9	647	62.8
Teck	17,422	4,138	23.8	3,277	18.8
Unorganized	4,495	990	22.0	863	19.2
Indian Reserves	0	0	0	0	0
<i>Towns</i>					
Charlton	157	18	11.5	16	10.2
Cobalt	2,209	888	40.2	702	31.8
Englehart	1,786	201	11.3	128	7.2
Haileybury	2,638	1,113	42.2	978	37.1
Latchford	479	206	43.0	153	31.9
New Liskeard	4,896	1,181	24.1	951	19.4
<i>Villages</i>					
Thornloe	211	171	81.0	171	81.0
¹ Total population 79, for other part see Cochrane.					
VICTORIA	29,750	864	2.9	126	0.4
<i>Townships</i>					
Bexley	661	43	6.5	0	0
Carden	329	3	0.9	0	0
Dalton	204	1	0.5	0	0
Eldon	1,590	15	0.9	7	0.4
Emily	1,691	26	1.5	5	0.3
Fenelon	2,074	31	1.5	5	0.2
Laxton, Digby & Langford	593	19	3.2	4	0.7
Mariposa	2,876	41	1.4	5	0.2
Ops	1,928	36	1.9	5	0.3
Somerville	1,203	46	3.8	3	0.2
Verulam	1,404	16	1.1	4	0.3
<i>Towns</i>					
Lindsay	11,399	490	4.3	70	0.6

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Villages</i>					
Bobcaygeon	1,210	38	3.1	9	0.7
Fenelon Falls	1,359	39	2.9	5	0.4
Omeme	809	16	2.0	3	0.4
Sturgeon Point	21	0	0	0	0
Woodville	399	4	1.0	1	0.3
 WATERLOO	 176,754	 6,995	 4.0	 1,764	 1.0
<i>Townships</i>					
Dumfries N.	3,399	64	1.9	7	0.2
Waterloo	9,000	403	4.5	53	0.6
Wellesley	5,166	342	6.6	4	0.1
Wilmot	5,714	235	4.1	12	0.2
Woolwich	5,492	250	4.6	6	0.1
<i>Cities</i>					
Galt	27,830	1,129	4.1	475	1.7
Kitchener	74,485	2,799	3.8	856	1.1
Waterloo	21,366	908	4.2	164	0.8
<i>Towns</i>					
Elmira	3,337	49	1.5	12	0.4
Hespeler	4,519	141	3.1	38	0.8
Preston	11,577	485	4.2	96	0.8
<i>Villages</i>					
Ayr	1,016	31	3.1	5	0.5
Bridgeport	1,672	108	6.5	28	1.7
New Hamburg	2,181	51	2.3	8	0.4
 WELLAND	 164,741	 15,066	 9.1	 10,336	 6.3
<i>Townships</i>					
Bertie	8,595	295	3.4	79	0.9
Crowland	1,870	174	9.3	117	6.3
Humberstone	6,574	587	8.9	389	5.9
Pelham	4,795	101	2.1	47	1.0
Stamford	31,014	1,619	5.2	771	2.5
Thorold	6,815	494	7.2	279	4.1
Wainfleet	4,755	111	2.3	47	1.0
Willoughby	1,881	97	5.2	39	2.1
<i>Cities</i>					
Niagara Falls	22,351	1,333	6.0	719	3.2
Welland	36,079	6,939	19.2	5,976	16.6

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Towns</i>					
Fort Erie	9,027	357	4.0	99	1.1
Port Colborne	14,886	2,112	14.2	1,486	10.0
Thorold	8,633	428	5.0	149	1.7
<i>Villages</i>					
Chippawa	3,256	189	5.8	51	1.6
Crystal Beach	1,886	218	11.6	72	3.8
Fonthill	2,324	12	0.5	16	0.7
WELLINGTON	84,702	1,721	2.0	466	0.6
<i>Townships</i>					
Arthur	1,717	24	1.4	2	0.1
Eramosa	3,093	42	1.4	4	0.1
Erin	3,272	59	1.8	14	0.4
Garafraxa W.	1,573	9	0.6	1	0.1
Guelph	5,636	243	4.3	113	2.0
Luther W.	1,252	10	0.8	2	0.2
Maryborough	1,993	20	1.0	3	0.2
Minto	2,077	20	1.0	3	0.1
Nichol	1,925	10	0.5	1	0.1
Peel	2,988	91	3.0	2	0.1
Pilkington	1,227	34	2.8	2	0.2
Puslinch	3,593	48	1.3	17	0.5
<i>Cities</i>					
Guelph	39,838	934	2.3	276	0.7
<i>Towns</i>					
Fergus	3,831	31	0.8	3	0.1
Harriston	1,631	9	0.6	0	0
Mount Forest	2,623	39	1.5	10	0.4
Palmerston	1,554	26	1.7	7	0.5
<i>Villages</i>					
Arthur	1,200	18	1.5	1	0.1
Clifford	542	6	1.1	0	0
Drayton	646	18	2.8	1	0.2
Elora	1,486	16	1.1	3	0.2
Erin	1,005	14	1.4	1	0.1
WENTWORTH	358,837	14,318	4.0	5,604	1.6
<i>Townships</i>					
Ancaster	13,338	305	2.3	68	0.5
Beverly	5,023	127	2.5	38	0.8

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
Binbrook	2,557	70	2.7	24	0.9
Flamborough E.	4,334	122	2.8	30	0.7
Flamborough W.	7,001	308	4.4	61	0.9
Glanford	4,714	143	3.0	27	0.6
Saltfleet	16,424	748	4.6	346	2.1
<i>Cities</i>					
Hamilton	273,991	11,493	4.2	4,791	1.7
<i>Towns</i>					
Burlington ¹	10,656	368	3.5	99	0.9
Dundas	12,912	437	3.4	75	0.6
Stoney Creek	6,043	152	2.5	39	0.6
<i>Villages</i>					
Waterdown	1,844	45	2.4	6	0.3
¹ Total population 47,008, for other part see Halton.					
YORK	1,733,108	58,012	3.3	24,516	1.4
<i>Townships</i>					
Etobicoke	156,035	4,241	2.7	1,507	1.0
Georgina	2,415	140	5.8	2	0.1
Gwillimbury E.	10,357	243	2.3	63	0.6
Gwillimbury N.	5,642	125	2.2	43	0.8
King	12,845	347	2.7	86	0.7
Markham	13,426	270	2.0	74	0.6
Scarborough	217,286	7,331	3.4	2,298	1.1
Vaughan	16,701	487	2.9	149	0.9
Whitchurch	7,391	258	3.5	76	1.0
York	129,645	3,085	2.4	1,429	1.1
York E.	72,409	2,287	3.2	769	1.1
York N.	269,959	7,061	2.6	2,767	1.0
Indian Reserves	108	0	0	0	0
<i>Cities</i>					
Toronto	672,407	27,564	4.1	13,538	2.0
<i>Towns</i>					
Aurora	8,791	285	3.2	75	0.9
Leaside	18,579	362	1.9	115	0.6
Mimico	18,212	783	4.3	318	1.7
Newmarket	8,932	237	2.7	57	0.6
New Toronto	13,384	787	5.9	378	2.8
Richmond Hill	16,446	545	3.3	167	1.0
Weston	9,715	260	2.7	93	1.0

	Total Population	Ethnic Origin		Mother Tongue	
		French	%	French	%
<i>Villages</i>					
Forest Hill	20,489	248	1.2	147	0.7
Long Branch	11,039	593	5.4	228	2.1
Markham	4,294	85	2.0	17	0.4
Stouffville	3,188	81	2.5	7	0.2
Sutton	1,470	65	4.4	1	0.1
Swansea	9,628	202	2.1	98	1.0
Woodbridge	2,315	40	1.7	14	0.6

An Analysis of Briefs Submitted
to the Royal Commission on
Bilingualism and Biculturalism
from the Point of View of
Their Relevance to the
Province of Ontario

Miss Elizabeth Way

(Student at Queen's University)

Summer, 1965

Miss Way is a Bachelor of Arts graduate from Queen's University; she prepared this paper under the direction of Professor John Meisel.

This report is an analysis of certain briefs presented to the Royal Commission on Bilingualism and Biculturalism. It is divided into three parts which analyze respectively those briefs originating in Ontario, those originating in Quebec, and with some comments on those recommendations that could be carried out relatively easily and quickly.

The following two articles, prepared by the Federal-Provincial Affairs Secretariat, attempt to summarize the findings of Miss Way's analysis.

An Analysis of Briefs Submitted to The Royal Commission on Bilingualism and Biculturalism from the Point of View of Their Relevance to the Province of Ontario

Part I: Briefs from Ontario

Summary of the Recommendations

The Ontario recommendations have been classified by subject matter under the following headings:

- Education
 - general
 - language teaching
 - French public schools
 - universities
 - teacher recruitment, training and placement
 - exchange programs
 - textbooks
 - the teaching of history
 - vocational, technical and business
 - adult
- Culture
 - general
 - periodicals, newspapers and books
 - theatre, art and cultural exchanges
 - mass communications—radio, television, films
 - libraries, archives and museums
- Public Relations
 - municipal affairs
 - use of French in the Ontario public service
 - use of French in the federal public service
 - use of French in private organizations and in industry
- Constitutional Aspect
 - French as an official language in Ontario
 - Ottawa as a federal district
 - Confederation, federalism

Education—general

One general demand which was made in this area was for a national educational system, mainly for the purpose of facilitating the movement

of children from one province to another. Several more recommendations urged that education be transferred to federal jurisdiction and that a federal department of education be established. The function of this new department ranged from complete control over the educational system to the function of simply providing information, research facilities and encouragement to the provincial departments. Other recommendations suggested the less permanent method of frequent consultation between the various provincial authorities. Another group of recommendations under this general heading included demands by ethnic organizations for the protection of the education rights of all ethnic minorities. This protection included both the setting up of ethnic schools by the government wherever there is a large enough group and the financial support by the government of the schools which the ethnic and cultural groups have set up on their own initiative. Several more recommendations urged that French-language schools be established for the children of military personnel posted outside Quebec. A fairly large number of recommendations concerned the financial aspect of education. Some recommended that financial subsidies be given to parents who are trying to obtain a bilingual education for their children, and others wanted support from the government for private schools which provide a bilingual education. Most of the recommendations in this group, however, demanded equal financial treatment for the separate schools in Ontario. A final, small group of recommendations requested that religious education be relegated completely to the private sphere of education, without any government support.

Education—language teaching

The numerous recommendations classified under this heading have been sub-divided into two further groups, teaching the French language and teaching other languages. The problem of language teaching seems to be one that concerns a very large number of the organizations from Ontario which submitted briefs to the Royal Commission on Bilingualism and Biculturalism. There are approximately sixty such recommendations, although this number does comprise some which are not in favour of any change in the present policy. Included in the first sub-group are recommendations that French should be made compulsory in public schools; that teaching methods should be vastly improved so that during the first years of instruction the concentration is on conversational French rather than written, grammatical French; and that greater use should be made of such teaching aids as television and films. Also suggested is a unified French program from the beginning grade to university, and a Dominion-Provincial conference on the problems of teaching French. A common negative recommendation from French-speaking groups in Ontario was that their children not be subjected to the study of another language before they have fully learned their own, a less than easy process in an English-speaking province.

The underlying philosophy of the ethnic organizations on the subject

of languages was that bilingualism should be defined as French or English and a second language of one's own choice, not necessarily just French and English. The recommendations of these ethnic organizations also urged that the government give financial support to ethnic groups which set up and conduct their own extra-curricular classes, and that languages other than French and English should be taught throughout the educational system if there is a large enough ethnic group to warrant such classes.

Education—French public schools

A large number of recommendations were made concerning the establishment of French schools within the public school system of Ontario. While it is possible now for French-speaking Roman Catholic children to receive instruction entirely in French under various Seperate School Boards in primary schools, this right is not continued to the end of secondary school; in most cases French instruction ends with Grade 8, and in some cases, at the end of Grade 10. The French-Canadian organizations which made these recommendations indicated their preference for a complete public French education, with all teaching and communication done in the French language, on the model of the English public schools. Essential parts of this French school system would have financial equality with the English public school system, textbooks created in the French language, rather than English or American texts or translations, and the privilege of writing all examinations, even those of Grade 13, in French. Also it was often recommended that there be some institutional recognition of this French public school system within the Department of Education.

Education—universities

The recommendations under this heading embodied several different kinds of demands: that universities in Ontario should require, for entrance, a knowledge of French and English, that all universities in Ontario should receive equal treatment with respect to government grants, without regard for their language or religion, that English-speaking universities should establish English summer courses, on the model of the Laval University French summer school, and, finally, that the number of courses on French Canada in English-speaking universities should be increased. Under the same heading, the ethnic organizations were most concerned with achieving some accredited representation of their culture and language in the various universities.

Education—teacher recruitment, training and placement

The recommendations under the sub-heading of teacher training have been classified in two ways: the demands for efforts to increase the supply and competence of French-speaking teachers who would teach in the French schools and of teachers of French in the English schools. It was generally agreed in all the recommendations that both types should be

bilingual, preferably with French as their mother tongue, the former because they will be communicating and teaching fully in French and the latter because it was realized that French should be taught to English-speaking pupils in French, not in English. Thus, it was recommended that the Ontario government set up, first, French departments within the English-speaking education and normal colleges to train the teachers of French, and second, education and normal schools which would be run in French to train the teachers who would teach in the French schools. It was also demanded that the existing French normal schools enjoy the same treatment as the English normal schools.

To recruit these French-speaking teachers of French, it was suggested that some kind of exchange program be set up between Ontario and Quebec. In return for valuable French teachers, the Ontario government could supply Quebec with competent, English-speaking English teachers. It was also suggested that this exchange program could be carried on with other French-speaking areas of the world.

To help the placement of teachers, and also to facilitate the movement of teachers from one province to another and, most important, to make the most efficient use of the teaching skill which is at present available, the opinion was expressed that it would be wise to remove any religious restrictions which might still continue to hamper and prevent the hiring of otherwise fully competent teachers.

Education—exchange programs

A very large number of recommendations was made in favour of exchange programs. This kind of project was one which could be supported easily by nearly all the various types of organizations. It was recommended, for instance, that teacher exchanges between Ontario and Quebec be extended, that French- and English-speaking universities should exchange professors, books and research information, that English-speaking university students should have the opportunity to spend their third year on an exchange scholarship in another university in Quebec, and vice versa. Also suggested was an exchange program between civil servants of various provinces to discuss common problems and between high school students during the summer vacations. It was generally agreed that these exchanges should be financially supported by the government, and that private industry should be encouraged to give money for this purpose, that as many of these programs as possible should be set up on as permanent a basis as possible, and that they should extend to all parts of Canada.

Education—textbooks

Agreement was easily reached under this heading on the importance of educational textbooks in the bilingual and bicultural development of Canada. French organizations dealing with the establishment of a French public school system in Ontario and the development of the French separate schools, expressed the opinion that these schools should use

French texts, texts which, in other words, have been written originally in the French language and which are not just translations of English or American works. Other types of organizations recommended that the texts used, especially in the literature and history courses in all schools, reflect the bicultural nature and development of the nation.

Education—the teaching of history

Teaching history in Canadian schools was a subject which provoked a considerable amount of comment. The basic assumption of the recommendations on this subject was that it has been partially the inadequate and biased teaching of history in French and English Canada which has caused the disruption of Canadian unity, and it was specifically suggested that there should be a single, objective history text for all Canada, a text which would be acceptable to, and would take into account the contributions of, all three groups in Canada, the French, the English and the so-called “ethnic” and “cultural” groups. A number of recommendations urged that this work be composed by a board comprising representatives of all these groups.

Education—technical, vocational and business

This type of education was not the concern of many organizations; only two recommendations were made which could be included under this heading. It was recommended by a business organization that commerce and business courses could extend greater recognition to French Canada so that French Canadians would feel more at home in the business world, and a French-Canadian-oriented association cited the need for French-speaking technical and business schools.

Education—adult

Of the few recommendations under this heading the main emphasis was on the need for more adult language classes. Also requested was the establishment of schools and institutes for professional linguists, translators and interpreters.

Culture—general

Under this heading, a fairly large number of recommendations was made which suggested the establishment of a permanent body to regulate cultural relations. One such recommendation advised the provincial government to set up an Ontario Arts Council, which would be the provincial counterpart of the Canada Council and which would work closely with the latter body. Other organizations requested the federal government to create a federal department or Crown corporation with the broad functions of supervising the bicultural relations and development of the whole country as well as giving support to the cultural activities of the other ethnic minorities.

The recommendations of the ethnic organizations under this heading concerned the protection of their cultural rights. They demanded that the

cultural activities of the ethnic minorities be given the same respect and financial support as the cultural activities of the French and the English groups. The ethnic associations insisted on the multicultural foundation of Canadian society.

Also included under this subject heading are a number of recommendations which were against any kind of biculturalism, much less multiculturalism, and which were in favour of anglicizing the whole country in the interests of national unity.

Culture—periodicals, newspapers and books

Recommendations included the demand for a French press agency which would serve not only the French newspapers of Quebec, but also the French language newspapers in other parts of the country. Dissatisfaction was expressed with the English bias of the Canadian Press. It was also urged that the press of all languages, in all parts of the country, be reminded of their responsibility to report disruptive events with objectivity and a sense of proportion.

Opinion was unanimous that there was an urgent need for a stronger and more viable periodic press in Canada, and invited the federal government to assume more initiative in this field. Two suggestions were that the proposals of the Massey Commission be carried out without further ado, and that periodicals and newspapers be given special mailing privileges, as well as other forms of financial support and moral encouragement.

Culture—translation service

The question of a translation service of some kind was one which was considered to be important to many associations. It was recommended that for the non-bilingual there should be many more good translations of Canadian literary works, plays, and poetry. It was hoped that, in this way, a start could be made towards introducing the two cultures to each other. Most of the recommendations for this translation service appealed to the federal government to provide the initiative and the financial support for this undertaking, since the salaries paid to translators are not high enough to attract many to this profession and because publishers suffer financial difficulties if they attempt to pay for the translation themselves or to publish bilingual books. The recommendations also mentioned the need for the translation of educational texts, although this was not desired by French-Canadian educational groups. Finally, it was suggested that perhaps the federal government could establish a special body to supervise the translation of books of all types from one language to the other.

Culture—theatre, art, cultural exchanges

A small number of organizations emphasized the importance of cultural exchanges and recommended that private organizations be encouraged to arrange exchanges of such art forms as the theatre, art exhibits and

musical groups. Also it was contended that the provincial government could do much to promote the development of such cultural groups and the frequency of cultural exchanges.

Culture—mass communications—radio, television, films

Many organizations were of the opinion that this section of Canadian society was a very important one for bilingualism and biculturalism. There were a number of demands for the extension of French-language broadcasting, both on radio and television, right across Canada. Other recommendations in this area limited their demands to requests for French-language broadcasting wherever there was a French minority in English Canada. A few other recommendations cited the usefulness of having the occasional French-language program on the English networks, not only for the enjoyment of those whose mother tongue is French, but also for those English-speaking Canadians who would wish to listen occasionally to French. It was suggested that this policy of having French programs on English networks and vice versa could be brought about through an exchange of programs between the French and the English networks. Some recommendations also were made about the organization of the Canadian Broadcasting Corporation. It was recommended that this body have more freedom, both financial and political, to follow a bilingual and bicultural policy and to extend broadcasting in both languages right across the country. Also suggested was more freedom and power for the Board of Broadcast Governors so that it might more easily exercise some control over the private radio and television stations.

The National Film Board, and other Canadian film industries also came under the scrutiny of some of the organizations. These organizations wrote in their briefs that films could play more important roles in the development of a unified Canadian society. Also mentioned was the value of films in the development of a greater degree of bilingualism across Canada.

In this field, as in others, the ethnic organizations were concerned with the protection of their rights and they urged that both the CBC and the NFB consider the cultural contributions of other groups in planning their respective programs.

It was also urged that there should be much more co-operation between the various agencies of broadcasting and mass communications and that there should be a much more unified program.

Culture—libraries, archives and museums

A fairly small number of recommendations was made which dealt with these collections of literary and cultural material. A French public library was requested for the city of Toronto, as were bilingual departments for all public libraries in the province. It was contended that civil service libraries should be bilingual and that the government should make a grant to the Canadian National Institute for the Blind for the establishment of a Braille library in French.

Archives and museums were particularly the concern of ethnic associations, which recommended that the National Museum and other museums and archives compile a complete collection of the cultural histories of all the ethnic minorities in Canada.

Public Relations—municipal affairs

This heading has been divided into two sections, traffic signs and the tourist industry, which has been included here simply for convenience. The latter section contained many recommendations which urged the promotion of travel, from and to all parts of Canada. To make this travel more enjoyable and more satisfying to the travelling French Canadian, and to give him the assurance that his culture is being respected, it was suggested that all sections of the tourist industry, including menus, hotels, national and provincial parks, and highways embody a recognition of the French language and culture all across Canada. The value of bilingual personnel was also mentioned.

French-Canadian organizations informed the Commission of their opinion that the international symbol system should be used for roads and streets all over Canada. If this were impossible or undesirable, they requested that bilingual signs be created and then erected.

Public Relations—use of French in the Ontario Public Service

The recommendations under this heading varied in the extent to which they suggested that the French language and culture should affect the organization and procedures of the Ontario Civil Service. One recommendation cited the need for translators; another wanted a special department for the French-Canadian clientele and their culture and language within the Ontario Civil Service; and another urged that the Ontario government issue bilingual documents, publications and forms.

Also included under this heading are recommendations which specifically applied to *both* the federal and the provincial administrations. Both in the recruitment and promotion policy and in the service provided to the public, it was recognized that there should be more bilingualism. It was recommended, for instance, that a citizen should be answered, verbally or in writing, in whatever language he had originally used. One recommendation even went so far as to suggest that this apply, in writing, to languages other than French and English. It was urged that all forms used by the government should be bilingual, that the employees of the various civil services who deal extensively with the public should especially be bilingual, that all French-Canadian civil servants should be allowed to work and communicate in their own language, and that the promotion programs of the provinces and the federal government abroad should take the French aspect of the society into consideration.

Public Relations—use of French in the Federal Public Service

The use of French in the federal public service attracted a large number of recommendations, some of which are similar to those mentioned

in the immediately preceding paragraph. Most of the recommendations under this heading urged that the federal public service be completely bilingual, and that to make it so, considerably more effort be put forth. During this process, however, it was requested that the present public servants receive some assurance of retaining their positions. It was recommended that high ranking officials in the Armed Forces and the Crown companies should be fully bilingual, that all reports should be written and issued in both languages, that letters should be answered in the language chosen by the citizen requesting information or assistance, that civil servants dealing with the public should definitely be bilingual, especially in areas in Canada where both languages are used, that a special tribunal should be established to handle complaints concerning the use, or non-use, of French in the public service, and that each English-Canadian section head should share his post with a French Canadian of equal rank, and vice versa. Generally, it was recommended that French Canadians in the federal public service should have the right to work and communicate in their mother tongue if they so wish, and that both English and French should have equal status and respect in the workings of all parts of the federal public service.

Recommendations also were made as to the methods which would have to be used to increase the use of French in the federal public service. The main method which was suggested was a special language course for federal civil servants. Although such a course already exists, its narrowness of application was deplored. It was urged that the course should be planned more carefully, that it should be given without any financial expenditure on the part of the civil servants and that these same civil servants should receive some assistance with their regular job while taking the course. The establishment of a special commission of three senior bilingual civil servants to supervise the development of bilingualism and biculturalism within the federal civil service was also recommended as was a National College of Public Administration, on the model of the French *Ecole Nationale de l'Administration*.

Another method which was suggested was at the recruitment and promotion level. It was requested that bilingualism be made part of the required qualifications for more positions, but especially for those which have dealings with the public. It was also stated that possibly more French Canadians could be attracted to the federal civil service by, first, the creation of special positions for French-Canadian civil servants, and, second, the creation of examinations written originally in French and reflecting the French-Canadian culture. Most of the recommendations expressed the opinion that, as well as changes within the federal public service itself, a massive campaign is necessary in order to attract French Canadians to Ottawa.

Public Relations—use of French in private organizations and industry

The federal and provincial public services were not the only bureaucratic organizations which were given consideration. It was also recom-

mended that the private organizations, of whatever type, and private industry should be reminded of the important role which they have in society and the leadership which they could provide in the development of bilingualism and biculturalism. It was suggested that they could provide this leadership by conducting their employment interviews in the language chosen by the applicant, whether English or French, that all examinations in the personnel program should be carefully drawn up and used, and if in French, naturally they should not be mere translations of the English versions. Exchange programs between similar organizations and different plants of the same industry were also recommended. Generally, it was agreed that organizations and businesses which deal with the whole country should assume more bilingual characteristics, with respect to their proceedings and their personnel.

Constitutional Aspect—French as an official language in Ontario

Under this heading, most of the recommendations were based on the assumption that the French-Canadian residents of Ontario should be given the same constitutional, educational, legal and political rights as are enjoyed by the English-Canadian minority in the province of Quebec. It was recommended that proceedings should be carried on in the courts of Ontario in either English or French, whichever was preferred by the participants; that French-language schools should receive the same constitutional protection as the separate schools; that members of the Legislative Assembly of Ontario should be allowed to speak in French if they wish, and that the reports of the debates and the committee proceedings should be published in French as well as English; and, finally, that the French language and culture should be given much greater expression within the whole fabric of the society.

Constitutional Aspect—Ottawa as a federal district

This heading has been divided into two sections, those recommendations which demand that Ottawa assume a more bilingual aspect, but without any constitutional change, and those which urge the creation of a bilingual and bicultural federal district. A comparatively large number of recommendations were made on this subject, the majority of them being in favour of the second alternative. In the first section, the recommendations simply requested that the street signs, the proceedings of the municipal government and other public bodies become more bilingual. In the second section, it was agreed by all that the new federal district should be carved out of an equal part of both Ontario and Quebec, that is, that it should include the present Ottawa-Hull area, and that it should have democratic control over the conduct of its affairs. One of the suggestions was that another province should be created out of the area, with all the powers and rights of a regular province, including representation in the federal Parliament. Agreement was evident in that most of the recommendations of this section assumed that only the transformation of the capital of Canada into a federal district could assure the development of a truly bilingual and bicultural area.

Constitutional Aspect—Confederation, federalism

This heading mainly comprises rather vague references to the need for a new constitution which would better reflect the modern character of the Canadian society. There was general agreement that the province of Quebec should be given a special status in this constitution, and that the new constitution should be drawn up on the basis of the compact theory of Confederation, that this new document, in other words, should exemplify the contract between the French and the English nations of Canada. None of the recommendations was in favour of any kind of separation. A number of other recommendations avoided the question of a new constitution, but suggested the establishment of machinery and practices which would ease the conduct of federal-provincial and interprovincial relations and which would help towards a greater degree of co-operation.

Part II: Briefs from Quebec

Summary of the Recommendations

The Quebec recommendations have been classified by subject matter under the following headings:

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|-----------------------|--|
| Education | — general
language teaching
French public schools in other provinces
universities
teacher recruitment and training
exchange programs
textbooks
the teaching of history
adult |
| Culture | — general
periodicals, books and libraries
theatre, art, cultural exchanges
translation service
mass media—radio, television, films, press |
| Public Relations | — general
use of French in the federal and provincial
public services
use of French in private organizations and in
business |
| Constitutional Aspect | — French as an official language in other prov-
inces
Ottawa as a federal district
Confederation, federalism |

Education—general

In a province where most of the schools have a religious basis, one of the most consistent demands in the general educational category was for

the establishment of non-denominational or neutral schools. The purpose of this recommendation was to permit parents to choose an educational system on the basis of language rather than of religion. Another common recommendation was that the children of military personnel, no matter where they are posted in Canada or abroad, should be able to receive their education in the language of their choice. Also included in this category were recommendations which urged that both the English and French schools in Quebec receive equitable grants from the government and that bilingual personnel of the Departments of Education receive some kind of bonus for this qualification. Also a number of recommendations were made concerning interprovincial co-operation and/or federal participation in education. One of the most common complaints was that the different systems of education caused difficulty for students who moved from one province to another. It was urged that there should be more co-ordination between the various provinces in the areas of both curricula and standards. Some recommendations requested that this co-operation be institutionalized in some sort of interprovincial or federal-provincial committee. One recommendation made the suggestion that the education of the English or French minority in the various provinces, as the case may be, should be the responsibility of the federal government.

Education—language teaching

This category, which is a large one, has been divided into four sections. This first section contains recommendations which deal with the *timing of the teaching of the second language*. Most of the recommendations requested that the second language, whether it be English or French, be made compulsory in all schools in all grades. Another large group of recommendations in this section urged that the teaching of the French language should be easily available in all schools throughout Canada. Moreover most of the organizations making recommendations on this topic, cited the value of starting the second language in the earliest grades when the children are most amenable to learning a second language. There were a few recommendations, however, which were concerned also with the preservation of the French language in a viable form, and which consequently proposed that the teaching of the second language, in this case English, should not be started until secondary school, after the French-speaking pupils had obtained a solid grounding in their mother tongue. A few more recommendations were concerned with the teaching of the French language to French-speaking children and requested more emphasis on the correctness and purity of the language.

The second section comprises recommendations concerned with the *methods of teaching the second official language*. The general recommendation was that the French teaching program should place more emphasis on oral or conversational French, especially in the early grades. One recommendation suggested that language teaching should be in terms of a "working" rather than an "academic" language, and another

stated that the French language should be taught to English-speaking children in a "more dynamic fashion". Various methods of achieving this "dynamic" approach were specifically mentioned. One was that the French language should be used as a language of instruction for other subjects in the school curriculum as well as French, such as history and geography. One brief went so far as to suggest that French should be used as a language of instruction for one third of the curriculum or more. Other methods suggested were neighbourhood school exchange, when there are schools of different languages in the same neighbourhood; the establishment of bilingual summer camps or the sending of children to camps which are not conducted in their mother tongue; and co-operation of the educational authorities with the Canadian Broadcasting Corporation and other private radio and television stations which could present programs designed to supplement the school language program. *Chez Hélène* was mentioned as a good example of the type of program which could be established. Also mentioned was the need for better textbooks as aids in teaching the second language.

The third section of this topic comprises recommendations on the subject of *who should teach the second language*. It was recommended, on the whole, that the second language, either French or English, should be taught by teachers whose mother tongue is that language. Provinces other than Quebec, it was suggested, should use the latter province as a source of French-language teachers. It was also urged that, in the province of Quebec, the religious barriers to the hiring of language teachers should be removed. Some recommendations in this section also sought to remind the Commission that higher salaries would attract more competent teachers to a career in language teaching.

A number of recommendations also were made concerning the teaching of other languages. These recommendations were to the effect that *any* language should be made available throughout the educational system if there was a demand for it. One recommendation suggested that a demand on the part of ten individuals for a certain language would be reason enough to establish classes in that language. These recommendations suggested that the other languages should have equality in every way with the two official languages.

Education—French public schools in other provinces

The underlying assumption of the many recommendations on this topic is that the French-language minorities in the English-speaking provinces have a moral right to be educated entirely in their mother tongue, a right which should not entail any kind of financial penalty on their part. The educational system of the province of Quebec was upheld as an example of the type of opportunity for both language groups which should be available in all the provinces. The only disagreement with this position was voiced by the French Protestant groups in Quebec, who have to choose between sending their children to French, but Catholic, schools, or Protestant, but English, schools. It was these groups who supported

the complete separation of the Church and the educational system, demanding, for the province of Quebec, French-language and English-language public schools, with separate religious instruction. The right of the French-speaking minorities in the other provinces to education in their mother tongue was considered to include also the right to French textbooks and examinations. One recommendation went so far as to suggest that the governments of the English-speaking provinces should assist their French-speaking students to receive their higher education in Quebec until such time as French-language institutions are established in the other provinces.

Education—universities

In the first section of this category, the recommendations were in favour of the establishment of new universities, a French university in the west of Canada, and a national university which would embody the bilingual and bicultural aspects of the Canadian society and educational system.

The recommendations in the second section concerned the opinion, held by many organizations, that the universities, of both languages, should be the leaders in the development of bilingualism and biculturalism in Canada. Methods of fulfilling this leadership role which were suggested were to increase the number of courses on French Canada and on Canadian problems, to increase co-operation between the staffs of English and French universities in planning and running courses and in research, and to increase the literary exchanges between French and English universities.

Education—teacher recruitment and training

One of the main complaints was that there were not enough normal schools in the rest of Canada to serve the French-speaking communities outside Quebec. It was urged that a number of regional normal schools, perhaps to serve more than one province, be established to develop a cadre of French-speaking teachers for the French public schools. It was also suggested that the Quebec government make some effort, perhaps through the universities, to attract more students to the teaching profession, the result of which would be beneficial both to Quebec and to the other provinces.

Another important problem which was mentioned in the recommendations in this section was the policy of complete segregation, in the Quebec educational system, of Protestants and Roman Catholics, both teachers and students. This policy, it was claimed, led to the absurd situation in which Protestant school boards in Quebec have to go abroad to find teachers of French able to teach in a Protestant school. It was urged that these religious barriers be removed as soon as possible.

As far as training was concerned, it was recommended that the normal schools in Quebec should be bilingual, and that all trainee teachers should be required to take some courses in the division which was conducted in their second language. It was hoped that this would lead to a

greater knowledge, among all Quebec teachers, of the bilingual and bicultural aspects of the province. The universities of Quebec were urged in these recommendations to establish training facilities for teachers, such as summer language schools, and courses in biculturalism.

Education—exchange programs

The subject of exchange programs was one which received support from many organizations. It was suggested by most, in fact, that this idea be expanded as much as possible, with moral and financial assistance from the government. Universities of both languages were urged to set up joint seminars for their students and to exchange teaching staffs. The present program of *Visites Interprovinciales* received wholehearted support and the opinion was expressed that the organization should receive larger grants from government so that it could expand its program. Also suggested was the establishment of an employment agency which would help students to find summer jobs in an area where they could live and work in their second language. Another method of promoting tolerance and knowledge of the other group was seen in the establishment of bilingual and bicultural summer camps. It was proposed that the various levels of government give travel bursaries to permit students to travel to other parts of Canada, and professional associations of nurses and librarians suggested that they too should be given some assistance with an exchange program.

Education—textbooks

The recommendations on this subject were in agreement that the textbooks used in Canadian schools should be written with the object of promoting understanding between the two major language groups. It was generally agreed that efforts should be made to establish a common curriculum throughout Canada, with common textbooks. It was recommended that more civics courses be given and that literature texts should include writings from both cultures.

Organizations which dealt with the establishment of French public schools outside the province of Quebec also referred to the textbooks which would be used in these schools. Their main demand was that these books should be written originally in the French language, so that they might adequately reflect the French-Canadian culture and aspirations.

Education—the teaching of history

The recommendations under this heading were concerned with the textbooks used in this subject and also with the approach or attitude of the history teachers. It was agreed, for instance, that teaching Canadian history should be more objective, with the emphasis on the unifying factors and events rather than those which promote disunity. In addition, it was accepted that there was a need for a common text, one which would embody respect for the historical perspectives of both the English and the French groups. This text, it was recommended, should be objec-

tive enough for use and acceptance all across Canada. With this end in mind, it was proposed that some kind of commission or board of eminent historians representing both the English and the French groups be established to create the textbook which would satisfy this requirement. It was also recommended that the history courses given in Canadian schools should include a study of the *B.N.A. Act*, and should be bilingual, wherever practicable.

Education—adult

The main recommendation in this section was that adults, as well as students, should have the opportunity to learn the second official language; it was argued that the government should feel no hesitation in providing the facilities for this language instruction, including an extensive advertising program of these courses and of the benefits to be derived from them. One recommendation doubted the ability of the provincial governments to discharge their responsibility in this field, and suggested that the federal government should fill the breach with a program of its own.

Culture—general

There was general agreement among the recommendations in this section that the English Canadians should make greater efforts to become cognizant of the French-Canadian culture. It was recommended that the government should encourage all Canadians to improve their knowledge of, and facility in, their second language. In addition, one recommendation was for a massive publicity campaign to educate all Canadians in the bicultural aspects of Canadian society and to persuade them to accept this dualism and to participate in it. At the same time, the recommendations urged that New Canadians should be encouraged to take part in the French language and culture as well as in the English language and culture. National leaders of all types, it was contended, should be bilingual, and should not aspire to a position of national leadership if they were unwilling to acquire this qualification. Governments should support, both financially and morally, the formation and development of bilingual and bicultural associations. The recommendations in this category made by ethnic associations emphasized their firm belief that the ethnic groups and associations in Canada have the same right as their French and English counterparts to the support and attention of the government.

A fairly large number of recommendations proposed that the Royal Commission on Bilingualism and Biculturalism should become a permanent institution. Various names were given to this permanent commission but, in general, the proposed object was the continued development and promotion of bicultural relations between the two founding nations. A few recommendations from ethnic associations proposed a similar kind of body, with approximately the same functions, which would, however, include relations between all cultural groups in Canada. Another suggestion in this section was a Bicultural Fund, which would assist university students to study in their second language.

Culture—periodicals, books and libraries

It was recognized by most of the recommendations under this heading that both the English and French Canadians are painfully unaware of the literary accomplishments of the other groups, and that a degree of understanding and tolerance could be promoted if there were more knowledge. Accordingly, it was recommended that books on cultural developments in English and French Canada be published and given wide publicity and distribution. It was also suggested, by an ethnic association, that such books could be printed in other languages as well as in English and French.

For libraries, it was suggested that the meritorious literary works of both groups and in both languages should be subsidized so that they could be bought by all libraries in Canada, and that all libraries throughout Canada should be encouraged to have a good stock of books, records, and films in the other language.

Culture—theatre, art, cultural exchanges

Cultural activities and artistic endeavours also were recognized as being very important factors in the development of Canadian bilingualism and biculturalism. It was urged that more government support should be given to bicultural activities in art, theatre and literature, as well as for exchanges of exhibitions and of groups interested in the arts. One recommendation suggested that the National Gallery should become more bilingual and another urged that cultural groups which make tours to other countries should be encouraged to remember, in some concrete fashion, that they come from a bilingual and bicultural country.

Culture—translation service

It was accepted by most organizations that few Canadians are bilingual, but that there is a need for both major ethnic groups to become mutually more knowledgeable about the activities and ideas of one another. The answer to the dilemma posed by these two opposing propositions was deemed to be some kind of translation service. It was recommended that the provincial and the federal governments co-operate to set up a number of translation schools all across Canada; that the government should subsidize translations of the best literary efforts of each group so that they can become available, without too much expense, to the unilingual; that the government should assist voluntary associations to set up translation systems for their meetings; and that there should be more translations of textbooks.

Culture—mass media—radio, television, films, press

The subject of mass communications was one which inspired a large number of recommendations. It was generally agreed that the French-speaking minorities outside the province of Quebec have a right to expect to be able to receive the service of French-language radio and television. It was therefore recommended that the CBC should extend its services

in both languages from "one ocean to the other", or that all radio and television stations should be bilingual with some time set aside for broadcasting in the other languages for the protection of the ethnic groups in Canada. A more pragmatic recommendation was that the English-language stations in English-speaking areas of Canada with French-speaking minorities should set aside a certain amount of time for the presentation of French programs. Another recommendation was that the National Film Board should increase its distribution of French-language films to areas of Canada outside Quebec where there are French-speaking minorities.

A number of recommendations also made suggestions for institutional changes or procedures in mass media which would help to develop bilingualism and biculturalism or at least a greater degree of understanding between the two groups. One of these suggestions was that the French and English sections of the CBC, and their respective program plans, should be combined. Another was that there should be a permanent exchange program established between the personnel of the radio, television stations, magazines and newspapers of both languages. This suggestion, in another recommendation, was extended to include the CBC. Other recommendations advocated that the ethnic groups should have some representation on the BBC, that the National Film Board should be divided into two autonomous sections, English and French, and that the provinces should be able to establish their own radio and television stations and their own film industry.

On the other hand, the ethnic associations which made recommendations under this heading were of the opinion that the mass media institutions, the CBC, the National Film Board, the private stations and the press, should make every possible effort to promote the multicultural character of Canadian society. The association of other ethnic groups, concerned with their cultural rights and survival, expressed the opinion that the ethnic groups should be allowed to participate in the mass media institutions as much as the French and English. One recommendation went so far as to suggest that at least one-quarter of the time on radio and television stations should be allotted to the ethnic groups.

A fairly large number of recommendations argued that mass media institutions have a very important role to play in the development of bilingualism and biculturalism. One of the most consistent recommendations in this area was that the mass media, the CBC, the NFB, the private radio and television stations and the press have a responsibility to produce educational programs which will promote understanding between the two founding nations. These kinds of programs could present the way of life of one group to the other; they could also include programs designed to teach the other language. Newspapers, it was stated, should remember their duty to engage in impartial and objective reporting of possibly disruptive events or statements. It was also suggested that there could be a program exchange between radio and television stations of both languages. This suggestion was applied to the press in another

recommendation which proposed that French and English newspapers could have an exchange of articles and editorials. It was also urged that the English newspapers expand their coverage of the Quebec scene. An important recommendation was that the Board of Broadcast Governors should intensify its efforts to encourage the private radio and television stations to participate in the policy of the promotion of understanding between the two groups.

Public Relations—general

The few recommendations in this section dealt mainly with the tourist industry, and suggested that French Canadians, when travelling in other parts of Canada, should be made to feel as much at home as possible. It was urged that the facilities used by the tourists (airports, railway and bus stations, motels, hotels and restaurants) should show clearly their respect for the French-Canadian culture and a recognition of the bilingual and bicultural aspect of Canadian society. It was also recommended that Canadians should be encouraged to travel in their own country.

Public Relations—use of French in the federal and provincial public services

This subject was of interest to almost all the organizations from the province of Quebec and therefore a very large number of recommendations were made on this topic. Representation was judged to be of great importance and it was consequently often urged that the public service should be recruited on the basis of proportional representation of all the various groups in Canadian society. The ethnic associations were especially vociferous in this demand, while a few French-Canadian organizations demanded that the same principle apply to the French Canadians. The French-Canadian organizations were more interested in plans to facilitate the entrance of French Canadians to the top posts of the federal public service.

Another topic under this heading which received ample consideration was the use of French in the military branch of the public service. The recommendations agreed that both in theory and in practice French should be recognized in the armed forces and should be equal in every way to the English language. This principle was also to apply to the use of French in the RCMP. It was urged that the French-Canadian members of the armed forces be allowed to use their mother tongue in their daily work. It was proposed also that bilingual qualifications should be financially rewarded and should even be demanded for the commissioned men. Other requests were for the development of a technical and military French vocabulary and dictionary and the creation of more French-Canadian units. On the subject of the cadets, one recommendation cited the value of the practice of having the cadets of the Collège Militaire Royale go to the Royal Military College in Kingston for the last two years of their schooling, but another deplored the fact that this practice

forced the French-Canadian cadets to spend their last two years studying in their second language.

On the question of recruitment, two philosophies of bilingualism in the provincial and federal public services were evident. On the one hand, a number of recommendations doubted the validity of a demand for bilingualism if the functions of the position did not require a knowledge of both official languages: for instance, where only one of the two languages was spoken or in a position where the civil servant was not required to meet the public. On the other hand, a large number of recommendations considered that all the federal civil servants should be bilingual, as a matter of principle, and that provincial employees should be bilingual if their job required language skills. Some recommendations requested that bilingualism be required for more and more positions until, eventually, the whole civil service would be completely bilingual. Plans were put forward to ensure that bilingual personnel would receive a bonus in salary, a factor which might serve as an incentive to unilingual personnel to learn the second language; that promotions should be based on bilingual qualifications; that all Canadian representatives abroad should be bilingual; and that there should be no discrimination in employment and promotion between French- and English-Canadian applicants. Other recommendations were that all the top government posts should require a knowledge of both languages and that the examinations for entrance into the public service should reflect the respective cultures of the two official languages.

The government in general, however, as well as the individual civil servants, was seen in many of the recommendations to have an important part in the development of bilingualism in the public service. It was recognized that the government would have to assist its employees to learn the second language by establishing courses and by providing incentives. These courses, it was recommended, should be available to the civil servants without difficulty or hardship on their part. As well as teaching languages, it was also proposed that the government should set up courses on the bilingual and bicultural aspects of Canada from historical, political and sociological perspectives. This training program was also held to be just as important for the provincial governments.

A considerable number of recommendations were for the use of French in the daily administrative procedures of the federal and provincial civil services. The fundamental attitude of the recommendations which demanded an increased use of the French language was that, in the daily administration, French should be equal in all respects to the English language, that French should be, in other words, considered as a "working" language rather than just a language of translation. It was demanded that all forms printed by the federal government should be in English and French, and that all documents and internal correspondence also should be in both languages. Moreover, it was specifically recommended that the French copy of any document should not be a merely mechanical translation of the English version. Another assumption was that any citi-

zen should be able to take advantage of the services provided by the federal government in the language of his choice. Recommendations also were made that the French-Canadian civil servants should be able to carry out their work in their mother tongue. More specific recommendations, which were, however, based on these general assumptions, were that all offices conducting the business of Canada abroad should be organized on a bilingual and bicultural basis; that all buildings, highways and parks run by the federal government should concretely manifest a recognition of and respect for the bilingual and bicultural nature of Canadian society; that Montreal should become the headquarters of the cultural activities of the federal government, which should, in addition, give ample consideration to bilingualism and biculturalism in its cultural relations with other countries; that the Historic Sites Commission should have more bilingual personnel; that senior civil servants of the federal government should be given a "sensitivity training" program to enable them to understand the "values and attitudes of the other language group". Also suggested was an exchange program between civil servants of both languages among the provinces and within the federal civil service; a fluently bilingual assistant for each deputy minister who is not bilingual, a deficiency which the recommendation hoped would be corrected soon; and a higher status for the federal Translation Bureau.

Public Relations—use of French in private organizations and in business

In addition to the government bureaucracies, the use of French in private bureaucracies also was considered by the briefs arriving from the province of Quebec. The recommendations contained in these briefs cited the need for businesses and private organizations to conduct a recruiting drive for more French Canadians. It was recommended that there be no discrimination against an applicant for a job simply because he spoke only French. It was realized that this was possible, however, only if French were recognized as a working language within the organization, a development which was also desired by the Quebec briefs. It was hoped also that political parties and other important national organizations would demand bilingualism of their leaders.

As in the government, it was recommended that private industry should establish language instruction courses and studies on biculturalism for its employees.

A number of recommendations were made for administrative practices which would assist the development of good relations between French and English Canadians. It was recommended, for instance, that advertising and publicity should be conducted in both languages; that an exchange system could be set up between various branches of a company; that internal communications of companies with French-Canadian personnel should be bilingual; that companies should make greater effort to serve customers in the language chosen by the latter; and that companies which transfer French personnel to English-speaking areas of Canada should make provision for the education of the children in the French

language, until such time as French schools are available in the English-speaking provinces.

Constitutional Aspect—French as an official language in other provinces

Some, although not all, of the associations from the province of Quebec were willing to make recommendations for the protection of the rights of their fellow French Canadians in other parts of Canada. Basically, the recommendations in this section urged that the French-Canadian minorities in the English-speaking provinces of the Canadian federation should have rights equal to those enjoyed by the English-Canadian minority in the province of Quebec. These rights should include the right to proceed through the provincial courts in the French language, the right, which has already been mentioned, to French public schools, the right to bilingual debates in the provincial legislatures and the right to receive services from the provincial government and the relevant municipal governments in French.

Constitutional Aspect—Ottawa as a federal district

A number of recommendations were made dealing with the bilingual and bicultural development of the capital of Canada. All the recommendations expressed the opinion that the capital city of the bilingual and bicultural country of Canada should also be truly bilingual and bicultural. This was as far as some of the recommendations went. Others felt that the only way the national capital could reflect adequately the bilingual and bicultural nature of the country was to become an autonomous federal district, rather than to remain a city of the province of Ontario. Some of the recommendations used Washington, D.C. as their model when suggesting a federal district for Canada. Others proposed that the present Ottawa-Hull area become a kind of province, with all the rights and responsibilities of the other provinces.

Constitutional Aspect—Confederation, federalism

Agreement was general that the present Canadian constitution must be revised and changed. Some briefs demanded more revision and changes than others; still others, while making no specific recommendations, favoured immediate separation of Quebec from the rest of Canada. Among the first group of revisionists, the most consistent demands were that Quebec should have a special status, that Confederation should, in fact and in theory, be a union of two nations, the French-Canadian nation and the English-Canadian nation. One specific recommendation on this point was that Quebec should become an associate state within the new Canadian Confederation with the right of secession. Others were that Quebec should have the right to sign international treaties and agreements and that the federal government should recognize the dissatisfaction of Quebec with the present constitutional arrangement and that it should assist the province of Quebec to fulfil its destiny and become master of its own fate.

The second group of revisionists used the *B.N.A. Act* as the basis for the demanded changes. In this section, it was recommended that the *B.N.A. Act* be brought under Canadian control, but with special guarantees for Quebec; that the provinces should all be able to enter into international agreements and that Quebec should have control over immigration into that province; that a special constitutional court should be established; that the interpretation of the *B.N.A. Act* should be made uniform and that the French version of the Act should have as much authority in constitutional disputes as the English text; that the Senate should be composed of equal numbers of directly elected representatives of each nation; and that Quebec should withdraw entirely from any federal-provincial financial programs. The one general recommendation included in this section, and one which was made often, was that the revised constitution should make both the French and English languages official throughout the country.

A series of pragmatic recommendations concerned the establishment of linguistic zones, of which there could be three types, unilingual English, unilingual French, or bilingual English and French. Some of these zones were to be fairly large, with all western Canada being unilingually English, while other recommendations proposed that the zones be based on electoral districts. Other recommendations based the linguistic definition of a zone on population rather than area. The function of these zones would be to help in deciding where the services provided by the various levels of government would be unilingual, either one language or the other, and where they would be bilingual.

Another set of constitutional recommendations concerned Section 93 of the *B.N.A. Act* which, most of the recommendations urged, should protect linguistic as well as religious educational rights. On the basis of this change in the constitution, two other recommendations demanded that the federal government have the responsibility to intervene if either the linguistic or confessional educational rights of minorities in any province were infringed upon by a provincial government.

Part III: Report on Recommendations Which Can be Fulfilled Soon

Briefs Originating in Ontario

The purpose of this section is to re-classify some of the Ontario recommendations which were included in the first report. In it, the recommendations were classified on the basis of the general length of time required to put them into effect as well as on the basis of the subject matter. More specifically, the purpose of the following discussion is to present those recommendations which, in the original analysis, were described as requiring a *short* period of time to carry out. This term has arbitrarily been defined as one year or less, while the other two categories, *middle* and *long*, designate, respectively, recommendations which will necessitate one to five years, and over five years, to be put into effect.

Education

One subject which attracted considerable attention from those submitting briefs from the province of Ontario was that of education. While many of the recommendations will require more than one year to fulfil, a number could be put into effect almost immediately. Many of these short-term recommendations need financial assistance. In the area of language teaching, for instance, the recommendations brought forward by the other ethnic groups requested financial support for their privately-sponsored language schools and classes. There were three recommendations in this vein. One other recommendation bemoaned the fact that the widely acclaimed French-teaching television program, *Chez Hélène*, could be seen only by pre-school children. It urged that the program be moved to a more convenient hour.

More generally there were two recommendations which requested government subsidies for private schools. One of these was from the Toronto French School whose brief concentrated mainly on the financial difficulties of the school. The other was a more general one from an ethnic association. In addition, the CNIB requested financial means for the establishment of a Braille and record library in French. The remaining recommendation suggested the formation of a new position within the Ontario Department of Education for a Franco-Ontarian who would have some sort of special authority over the educational institutions attended by Franco-Ontarians.

In the university section of the education file, the short-term recommendations included a request for more financial support for Laurentian University in recognition of its contribution to Canadian unity by virtue of its bilingual character, two demands for an increase in courses on French Canada and on inter-group relations (change already taking place), one suggestion that the lack of language teachers would be mitigated somewhat if the Ontario government provided financial incentives to universities to set up language courses for teachers, and, finally, a recommendation that university credits be given for the languages of the other groups.

In yet another section, on the training of teachers, there was one recommendation which, in response to the urgent need for language teachers, suggested that the government supply bursaries and scholarships for those who intend to enter the language teaching profession. With a similar purpose in mind, another recommendation thought that perhaps the lack of French-language teachers could be alleviated partially if the Ontario government were to recognize, as professionally valid, certificates from the University of Ottawa Teachers' College.

Finally, a single recommendation proposed that the Ontario government "investigate the teaching of history in Canadian (Ontario) schools and universities."

Within the general section on education in Part I of this report, which commented on the recommendations classified according to subject matter, was included a section on educational exchange programs. The recom-

mentations in this area requested that the various levels of government and private associations move to organize and support exchanges between students and teachers from both English and French Canada. It will be recalled that in the reports on the briefs emanating from both Ontario and Quebec, it was remarked that the many recommendations of this type were made by all sorts of groups, indicating a wide consensus of opinion on the value of this kind of program. In addition, there are exchanges of this sort being organized by already existing institutions, such as *Visites Interprovinciales* and the Canadian Centennial Commission. Thus, it seems that these recommendations would entail neither the acceptance of a radically new idea nor the establishment of any new institutions. I have therefore taken the liberty of designating this whole section as containing short-term recommendations.

Mass Communications

In the matter of mass communications, three recommendations urged that the government attempt to instil in the persons dealing with communications a sense of responsibility for spreading the idea of Canadian unity and an awareness of the important role they have in the development of this unity. Another recommendation proposed that the development of a Canadian film industry should be encouraged. One other group requested that the CBC re-instate the program, *Rhapsody*, and finally, it was also recommended that the federal government set up an advisory board, comprising representatives from all Canada's major ethnic groups, to confer with the CBC on radio and television programs presented on CBC stations.

Culture

The short-term recommendations which commented on the urgent need for the translation of literary works from the one national language to the other concentrated mostly on the role of public financial resources in helping to develop this activity. The CNIB requested a specific sum to translate course material into French, which at present exists only in English. Two other recommendations came from groups which wanted money to translate works of specific interest to them from one language into the other. The United Church of Canada suggested that the various levels of government use their financial resources to attract people to the profession of translator.

On the topic of the condition of Canadian periodicals and the daily press, there were a number of short-term recommendations. Two of these suggested that the co-operation of the Post Office could be used to give daily newspapers and periodic journals a wide distribution all across Canada. Two other recommendations urged that the government give financial assistance to journals which contribute to Canadian unity, particularly if they publish articles in both English and French, and that the government offer a monetary prize to any journalist, film producer or any other individual "qui stimulera d'une façon exceptionnelle la connaissance et la bonne entente entre les groupes culturels". An ethnic associa-

tion asked that the Canadian Citizenship Branch publish a revised edition of *Notes on the Canadian Family Tree*.

In the general field of culture, there were three short-term recommendations which urged that the government encourage cultural groups to indulge in bicultural exchanges. This encouragement was imagined as taking the form of a publicity campaign as well as that of financial support. This activity is already noticeable on the part of many voluntary associations.

Of the six short-term recommendations which called for financial support of cultural groups, half were from other ethnic cultural associations which indicated their opinion that their types of organization should receive as much financial support as do the English and French groups. The other three recommendations suggested that the activities of the Canadian Citizenship Branch should receive more publicity, that the National Museum should have the authority to delegate funds to other, smaller museums and libraries, and that the government should support public cultural projects undertaken by voluntary cultural associations.

As well as providing financial support to existing cultural associations, it was proposed that the government enter the cultural field itself and establish a public cultural institution; specifically it was suggested that an Ontario Arts Council be established. (This has, of course, already been done). This body would work closely with the Canada Council and would have as one of its goals "the support of the cultural institutions and enterprises of the Franco-Ontarians". The other recommendations were aimed, more or less specifically, at the federal government, although (as in other recommendations discussed here) not preventing the Ontario government from taking action on its own initiative. These other recommendations proposed the establishment of "un Bureau d'Informations canadiennes-françaises" designed to correct the prejudices existing all across Canada concerning the French Canadians, a "special institute for the study of the Canadian people", a group which would in this case include *all* ethnic groups and a "permanent Culture Centre, whose representatives would be available to work with cultural groups throughout Canada" and which would, in addition, conduct sociological studies of the various groups comprising the Canadian population. A final similar recommendation on this topic suggested that the federal government set up a series of institutions, one English, one French and one for "les autres groupes". The functions of this series of institutions would be similar to the ones mentioned above: the conduct of research and publicity on behalf of these groups and also the promotion of good relations between them.

Public Relations

An obvious recommendation which should take only a short time to carry out was the demand for bilingual traffic signs. Three recommendations asked that bilingual traffic signs be used on the highways and in urban streets, especially in areas where there are many French-speaking

Canadians, while another specifically recommended that all public signs in Ottawa should be displayed in both languages. Three others thought that perhaps the international traffic sign system might be better. Another recommendation urged that the material published for use in the tourist industry should be bilingual. Along the same lines, a recommendation which was originally filed with the civil service recommendations, urged that the federal government "donne un aspect bilingue au pays . . .", for instance, by erecting bilingual signs and notices on and in its buildings all across Canada.

Public Service and Private Organizations

The short-term recommendations which related to the linguistic state of the civil service were at times concerned with the provincial civil service and at times with the federal civil service. On still other occasions, the recommendations were general and could be applied to all civil services including municipal.

The subject of the civil service was one which provoked a considerable number of recommendations. One type which has been included here was the demand that both the federal and the Ontario governments issue documents and publications of all sorts in both languages. Four of the six recommendations in this category were aimed directly at the government of Ontario. These recommendations demanded that the French minorities in the other provinces, and especially in Ontario, should have the same rights in this respect as the English minority in Quebec. Two other more general recommendations requested that all governmental forms and publications be issued simultaneously in both languages, and that civil servants be allowed to exchange reports between themselves or other citizens in the national language of their choice.

A similar type of recommendation asked that it be ensured that applicants for positions in the civil service, and in particular the federal civil service, be interviewed and examined in the language of their choice, English or French. Another recommendation urged that this same policy be applied in private bureaucracies. Some recommendations, taking a different aspect of this problem, complained that although French-Canadian applicants for jobs are given examinations in French, these examinations were simply translations of the English text and were therefore not in any way connected with the French-Canadian system of education and way of thinking. They asked that this state of affairs be changed, and that French-Canadian candidates be presented with examinations written originally in the French language.

Another common topic in this general category was the encouragement of bilingualism within the civil services and in private industry. Because programs of language training already exist, most of the recommendations referred to the extent of the encouragement of bilingualism and concentrated on the mechanics and efficacy of the language classes. The general opinion was that these courses were not as effectively managed as they might be.

In the field of recruitment to the civil service and promotion within it, there were many recommendations which proposed that bilingualism be demanded for all posts. Included in this report, however, are only those more moderate proposals that bilingualism in the two official languages be seriously considered as an important factor in recruitment and promotion, all other factors presumably being equal. One recommendation suggested that the application of this policy was necessary only when the position to be filled called for considerable contact with the public or when it existed in an area where a large proportion of the population spoke the second official language.

Two final recommendations under this heading are discussed together simply for the sake of convenience, fitting as they do only into categories of their own. The first one was a rather specific complaint that the publicity propagated abroad by the federal and provincial governments ignores the bilingual and bicultural nature of Canada. It was suggested that this omission be rectified immediately. The second recommendation was a very general one which proposed that every Canadian in a position of authority, either in the public or private sector, be encouraged to reflect seriously on his personal responsibility for the development of Canadian unity.

This sentiment was echoed in the final recommendation to be discussed in this report, a recommendation which called for “. . . a National Declaration of Purpose, endorsed by the federal government and by all the provinces, affirming the binational character of our country . . . It could also serve as an expression of the rights and ideals shared by all Canadians, new and old. . . .”. There is, of course, no reason why such a declaration should not originate in Ontario and why it should not be endorsed or even introduced by the government of Ontario.

Briefs Originating in Quebec

The purpose of this section is similar to that of the preceding one: to supplement the report already written on the recommendations which were compiled from the briefs emanating from the province of Quebec, and which were discussed earlier on the basis of subject matter. The following account will discuss some of these recommendations as they were classified according to the length of time needed for their fulfilment. Specifically, what will be discussed here will be those recommendations which could be completed almost immediately, that is, in a year or less. They will be presented under headings similar to those of the original analysis. It should be remembered, however, that these recommendations are from associations situated geographically in the province of Quebec, and thus will not always be directly concerned with the actions of the Ontario government. Recommendations relating more to the actions of the federal government or the government of Quebec have been included on the grounds that the Ontario government can choose to make them relevant in Ontario if it so wishes.

Education

One common demand was for the strict equality of all schools in the receipt of public financial support. The basis of this demand was the contention that separate or French schools receive less of this financial support than the public or English schools. It was recommended that all schools receive sums based equally on the number of pupils enrolled in the schools. One other recommendation under this heading requested that provincial departments of education consider "financial incentives for bilingual staff".

In the university area of education, most of the recommendations were based on the opinion that the universities have a leading role in the development of Canadian unity. The short-term recommendations included suggestions for the establishment of a French-Canadian corner in the university libraries or the students' unions; literary exchanges between French and English universities; co-operation between French and English university staffs in the establishment and running of courses; the institution of courses given in both official languages, French and English, and of advanced French conversational courses. It was also recommended that students studying in their second language be allowed to write their examination and term papers in their mother tongue, English or French. A final recommendation on this subject suggested that, until such time as French-language higher educational institutions have been established in provinces such as Ontario, with large French-Canadian minorities, the provincial government give financial aid "to their French-speaking residents who wish to pursue their studies in established French-speaking universities and colleges in Canada".

One educational problem which received considerable attention was that of language teaching. One recommendation in this area suggested that one step in the right direction would be the presentation to pupils of French and English as "the other Canadian languages" rather than as "foreign languages". The other recommendations present the provincial departments of education with an extensive program of study. Their main interest was in the use of television and other audio-visual aids in the language-teaching program and they suggested that the educational authorities initiate some kind of co-operation with the CBC in order to make better use of such good language-teaching television programs as *Chez Hélène*. Other topics brought forward for the consideration of the provincial departments of education were neighbourhood school exchanges, between schools of either the French or English language, the use of summer camps as a method of teaching the second language and the possibility of forming "special minority language classes within regular schools". It was finally recommended that the government encourage public interest in and support for experimental bilingual schools.

In the sphere of teaching history in Canadian schools, it was first recommended that a special commission be established in order to conduct a study of this very problem. In the meantime, it was suggested, history teachers could be instructed to teach Canadian history in the most

objective and tolerant manner possible and that they could emphasize the unifying, rather than the disrupting facets of Canadian history.

The few recommendations concerned with adult language education advocated that the government give more thought to planning these programs, while at the same time giving more publicity to the existing ones, and to the benefits to be derived therefrom. It was recommended that the general adult public not be neglected in any public bilingualism campaign.

The Quebec recommendations were similar to their Ontario counterparts in that they too included many requests, from all types of organizations, for the establishment and continuation of education exchange programs. This widespread support and the present existence of organizations designed to implement this type of program would seem to indicate again that all the recommendations asking for this measure should be classified as short-term recommendations.

Culture

Most of the recommendations in this general area were comprehensive requests that the government encourage, by whatever means possible, the growth of Canadian cultural activities. One such recommendation, for instance, urged the government to begin a campaign to encourage the public to accept the bilingual and bicultural character of Canadian society, and, to this end, set up a federal Ministry of Cultural Affairs. Others recommended that the government conduct another campaign to persuade the public to take steps to learn the second language and to become acquainted with the other culture. Methods of achieving this goal included the promotion of travel to all parts of Canada, the promotion of all kinds of exchanges of artistic groups, and encouragement of the growth of bicultural groups. Other ethnic groups expressed the opinion that their activities should receive as much of this attention and support as the French and English groups. More specific short-term recommendations concentrated on financial and institutional measures. One recommendation, for example, requested that the Canada Council allot a larger proportion of its expenditures to the development of inter-cultural relations, while another suggested that a special bicultural fund be set up to help university students who are studying in their second language. Another recommendation complained that Ukrainian students and professors had not benefited enough from the financial distributions of the Canada Council. The three remaining recommendations were interested in institutional recognition of the need for action to promote the growth of Canadian unity, and suggested, as one put it, "... the establishment of an Inter-Cultural Council, with the participation of representatives of two basic groups in Canada, as well as other ethnic groups, such councils to be established both on the federal and provincial level."

With respect to the literary aspect of the culture file, two recommendations sought to promote national unity by proposing that the Canada Council (or perhaps a similar Ontario body?) give financial support to

libraries to enable them to improve and extend their stock of books, records and films of the other national culture.

On the subject of a translation service, two recommendations advocated that the government give financial assistance to professional, scientific and cultural associations in order to provide them with the means to translate textbooks and other relevant publications from one language to the other as well as to have a simultaneous translation system at their national meetings. Other recommendations proposed that the government provide the funds for the translation of the best of the literary efforts of both the French and the English groups so that they might enjoy wider circulation all across Canada.

The mass media, along with the universities, were generally looked upon as having an important role to play in the promotion of Canadian unity. One common piece of advice was that all the mass media, but particularly the newspapers, should be encouraged to be more impartial and objective in their coverage of current national affairs. It was also suggested that the mass media should attempt to make the various regions of Canada better known to each other, perhaps, as was mentioned by one recommendation, by having guest editorials and exchanges of articles and programs, or as was suggested by another, by the practice of including phrases from the second language in programs presented mostly in the other. The three recommendations which were interested in the productions of the National Film Board urged that the films receive wider publicity and distribution all across Canada. In addition, one of these recommendations thought that it would be a good idea if some of the NFB French productions were shown in larger centres outside Quebec, particularly if there existed in these centres French-speaking minorities.

Bureaucracies—private and public

Concerning the role of private business and industry in the development of Canadian unity, all the recommendations generally agreed that this role was an important one. The short-term recommendations included demands that businesses with national markets should take steps immediately to serve a customer in the language of his choice. More specifically, the recommendations in this area asked that "Montreal hotel owners create and maintain a French atmosphere" and that articles produced in Canada for export should bear the mark "fait au Canada" as well as "made in Canada". Another aspect which was mentioned by the Quebec briefs was the position of French-speaking Canadians in national organizations and businesses. A group of French-speaking medical doctors, for example, requested a simultaneous translation system and bilingual copies of the proceedings at national meetings of Canadian doctors. Another recommendation supported this request in a more general manner, while two others urged that businesses with any number of French-speaking Canadians on their staff should take steps to construct a bilingual communications system, if such a system did not already exist. Another series of recommendations was that private businesses should be encouraged

to realize the value of holding language-instruction courses for their staffs, particularly if the company has a market in the province of Quebec. The idea of an exchange program was even evident in this field; a number of recommendations thought that the transfer of executives from English to French Canada and vice versa could do much to contribute to Canadian unity. These recommendations, however, also recognized the difficulties of sending French-Canadian personnel to English areas of Canada, and suggested that the government could encourage companies to make better provisions for the education of the children. It was proposed, for instance, that businesses could be encouraged to give financial support to private French schools outside the province of Quebec.

The topic of the civil service, both federal and provincial, was one which attracted considerable attention in the Quebec recommendations, many of which could be classified as short-term recommendations. Some of these were aimed at the provincial government, and others at the federal government, and others were general enough to be applied to any government. One policy, requested by a large number of recommendations, concerned the publication of all documents, forms, reports, etc., in both languages. In addition, it was asked that this policy be applied to internal correspondence and reports as well as those destined for public consumption and that unless a publication could be issued in both languages at once, the publication be delayed until this were possible. Some of the recommendations deplored the use of bad translations in the publication of government documents and hoped that it might be possible in the near future for each document or report to be drafted in both languages. Another similar recommendation was that all federal buildings and property should have bilingual signs, both within and without. Finally, it was recommended that the federal Translation Bureau be given a status similar to that of the Dominion Bureau of Statistics.

In the field of recruitment to the federal civil service, the recommendations concentrated mostly on the state of the examining and interviewing procedures of recruitment. Again, the recommendations complained of French examinations which were direct translations of the English originals, and demanded that French-speaking candidates for positions in the civil service be presented with examinations originally drawn up in the French language and thus reflecting the French-Canadian culture. Similarly, it was urged that the candidate be permitted to choose the language in which his interview would be conducted. With respect to bilingualism as a prerequisite of employment with the government, the recommendations which have been included here were of the opinion that bilingualism in the two official languages should be considered as an important, but not overriding, qualification for government employment, depending on the duties of the various positions.

The importance of the institution of language-instruction courses for civil servants was realized in the Quebec briefs as it was in those from Ontario, and it was in this area of the civil service file that the responsibility of the provincial civil services was specifically mentioned. The

short-term recommendations in this field urged that the existing course be intensified and made easier for civil servants to take, and that new courses on the bicultural nature of Canada be set in operation as soon as possible. A few other recommendations were of the opinion that the improvement of French-English relations in Canada lay partially not only in the establishment of language courses for civil servants, but also in a series of exchange programs of civil servants, a program which would embrace not only interprovincial but also federal-provincial exchanges.

The final group of recommendations to be discussed under the civil service heading concerned the conduct of Canada's foreign relations. One recommendation complained that Canada was not presented to the rest of the world as a bilingual and bicultural nation, and requested that this policy be changed immediately. It was also recommended by another group that the federal government take the bicultural nature of Canada into account in its cultural relations with other countries.

Substance of Recommendations in the Field of Education to the Royal Commission on Bilingualism and Bicultural- ism as These Pertain to the Province of Ontario

ADMINISTRATIVE

Common Substance of Most Recommendations:—Ensure legal and administrative parity for French-language schools.

Specific Points

Establish by law, obligation to institute autonomously administered French-language school system.

Appoint Deputy Minister or Committee to apply decisions of Minister of Education to French-Ontario primary and secondary schools.

Separate school boards should have right to establish secondary schools.

Inspectors should be competent for bilingual schools.

Institute procedure to determine number of French-speaking parents in school district which justifies classes in French or French-language schools.

Include French-and English-language schools in public system.

Local school administrators must be equally responsible to French- and English-speaking populations.

End needless duplications of school systems.

Distinguish linguistic and religious rights.

Financial: Common Substance of Most Recommendations:—Comparable fiscal treatment of all schools; and provide incentives to encourage bilingualism.

Specific Points

Comparable per capita revenue.

Recommending Bodies

L'Assoc. Canadienne-Française d'Education d'Ontario.

Union des Sociétés Saint Jean-Baptiste, Cité d'Eastview.

Individual.

L'Assoc. des Enseignants Franco-Ontariens.
L'Assoc. des Inspecteurs Franco-Ontariens et des Professeurs d'Ecoles Normales.

L'Assoc. des Commissaires d'Ecoles Catholiques de Langue Française du Canada.
L'Assoc. des Inspecteurs Franco-Ontariens et des Professeurs d'Ecoles Normales.

L'Assoc. des Inspecteurs Franco-Ontariens et des Professeurs d'Ecoles Normales.

L'Assoc. des Inspecteurs Franco-Ontariens et des Professeurs d'Ecoles Normales.

Carleton University staff.

La Commission des Ecoles Catholiques de Montréal.

Glengarry Historical Society.
Two Individuals.

Some members of the Faculties of Queens, R.M.C., Dalhousie, Kingston Collegiate, and the *Kingston Whig-Standard*.

Recommending Bodies

L'Assoc. Canadienne des Educateurs de Langue Française.

L'Assoc. Canadienne-Française d'Educ. d'Ontario.

La Commission des Ecoles Catholiques de Montréal.

Members of the Faculties of Queens, R.M.C., Dalhousie, Kingston Collegiate, and the *Kingston Whig-Standard*.

Sir George Williams Assoc. of University Teachers.

L'Assoc. Culturelle Canadienne-Française de Timmins.

L'Assoc. des Inspecteurs Franco-Ontariens et des Professeurs d'Ecoles Normales.

ADMINISTRATIVE (*Cont'd*)

Provincial Government collect and disburse revenue on per capita basis.

Encourage Bilingualism

Gov't. grants to establish parallel courses in French and English at least in bilingual universities.

Incentives for bilingual staff.

Special grants to universities for language courses to meet urgent need for bilingual teachers.

Annual grant of about \$74,000 to C.N.I.B. for "a braille and talking-book library".

Gov't. and business support for universities to become centres of bilingualism and biculturalism.

Special bursaries to qualify as teachers of English or French, to meet urgent need.

Federal Government subsidize second language instructions.

As a bicultural institution, helping to foster Canadian unity, Laurentien University should receive more money.

Consider Provincial endowment for the Toronto French School.

Reward all schools with subsidies for "adequate levels of bilingualism".

Deduct fees for private bilingual schools from school taxes.

National System: Common Substance of most Recommendations:—Institute a Federal Co-ordinating body.

Specific Points

Equal number of French-and English speaking representatives; preserve rights of both cultures.

Accelerate efforts to establish a common curriculum.

Finance and arrange teacher exchange.

Exchanges of Ministers and/or Deputies.

Exchanges of Deputy Ministers or delegates; undertake teaching methods research; conduct special courses for educational leaders.

Complaints and solutions tribunal.

Analogous to Council of Research Ministers; encourage bilingualism.

Federal responsibility for French-speaking minorities in English-speaking Provinces.

Canada-wide non-confessional system; facilitate interprovincial transfer of students.

Provide information clearing house.

L'Assoc. des Femmes Diplômées des Universités.

L'Assoc. Canadienne-Française d'Education d'Ontario.

Canada Junior Chamber of Commerce.

The Canadian Federation of University Women.

C.N.I.B.

McGill University.

National Conference of Canadian Universities and Colleges.

The Student Law Society, U. of T.

L'Université Laurentienne de Sudbury.

The Toronto French School.

The Toronto French School.

The Toronto French School.

Recommending Bodies

Byelorussian Canadian Alliance.
The Junior League of Montreal.
Sir George Williams Assoc. of University Teachers.
Teachers of French, Welland Eastdale Secondary School.
L'Université Laurentienne de Sudbury.

Members of Faculties of Queens, R.M.C., Dalhousie, Kingston Collegiate, and Kingston *Whig-Standard*.
Student Christian Movement.
Individual.

The Canadian Manufacturers Assoc.
Unitarian Churches of Montreal and Pointe Claire.
Five Individuals.

Five Individuals.

The Trans-Canada Alliance of German-Canadians.

Education Reference Books Publishers' Assoc.

Le Conseil de la Vie Française en Amérique.

I.O.D.E.

Montreal Star.

Quebec Federation of Protestant Home and School Associations.

The Royal Society of Canada.

ADULT

Common Substance of Most Recommendations:—Greatly extend facilities for second language instruction and widely advertise advantages of such study.

Specific Points

Intensive courses for civil servants, C.B.C. to conduct extensive programs.
Emulate successful Saguenay programs.

Provinces should yield rights to Federal Government.

Create schools of professional translators and interpreters.

Recommending Bodies

Alliance Canadienne.
La Fédération des Sociétés Saint Jean-Baptiste.
La Club Richelieu and The Rotary Club—both of Montreal.
The Hellenic Can. Soc. of University Graduates.
Peoples Forward Party.
The Religious Society of Friends.
The United Church of Canada.
Unitarian Churches of Montreal and Pointe Claire.
Individual.

Canadian Polish Congress.
Individual.
Individual.

Quebec Federation of Protestant Home and School Associations.

The Royal Society of Canada.

CONSTITUTIONAL

Common Substance of Most Recommendations:—Amend Sect. 93 of the *B.N.A. Act* to include recognition of French-language rights.

Specific Points

Amend Sections 91 and 92 of the *B.N.A. Act* to provide the provinces with increased revenue for education.

Recommending Bodies

L'Assoc. Canadienne des Educateurs de Langue Française.
La Commission des Ecoles Catholiques de Montréal.
Le Conseil de la Vie Française en Amérique.
Corp. des Instituteurs et Institutrices Catholiques de Québec.

L'Université Laurentienne de Sudbury.
Union des Sociétés Saint Jean-Baptiste, Cité d'Eastview.

EXCHANGE PROGRAMS

Common Substance of Most Recommendations:—Greatly extend inter-regional and interprovincial teacher and student exchange programs, summer camps, conferences, etc.

*Specific Points**Recommending Bodies*

L'Accord.
The Anglican Church of Canada.
L'Assoc. des Femmes de Carrières de Granby.
L'Assoc. des Inspecteurs Franco-Ontariens, et des Professeurs d'Ecoles Normales.
Bishop's University.
Byelorussian Canadian Alliance.
Canadian Authors' Assoc.
Canadian Clubs Associations.
The Canadian Federation of University Women.
Canadian Junior Chamber of Commerce.
Canadian Public Relations Society Inc.
Carleton University Staff.
Catholic Women's League of Canada.
La Chambre de Commerce de Sherbrooke.
La Corp. des Travailleurs Sociaux de la Province de Québec.
The Exec. Council of the Canadian Chamber of Commerce.
McGill University.
Some members of U. of T. French Dept.
The Montreal Council of Women.
Natl. Conference of Cdn. Universities and Colleges.
National Council of the Agricultural Institute of Canada.

EXCHANGE PROGRAMS (*Cont'd*)

Irrelevance of religious differences.

Canada Council to help facilitate, arrange twinning of schools and junior year exchange programs.

Ask industry for financial support.

Joint University programs.

Encourage blind children to participate in Visites Interprovinciales.

Arrange Centennial project and continue it after 1967.

Establish Centennial student work study program; publish in educational periodicals, run on yearly basis, supported by business organizations.

Extend idea of Visites Interprovinciales.

Scholarships for regular under-graduate exchanges; Canada Council or similar body, to direct permanent system of regular exchange of professors and government researchers.

Support Visites Interprovinciales.

New Democratic Party of Canada.
Prov. Assoc. of Protestant Teachers of Que.
Que. Fed. of Protestant Home & School Assoc.
The Religious Society of Friends in Canada.
Sarnia Junior Chamber of Commerce.
Sir George Williams Assoc. of University Teachers.
Sir George Williams University.
The Teachers of French in the Secondary Schools of London (Ont.) District.
The Teachers of French—Welland Eastdale Secondary School.
The Trans-Canada Alliance of German-Canadians.
Union des Sociétés Saint Jean-Baptiste, Cité d'Eastview.
Unitarian Churches of Montreal and Pointe Claire.
L'Université Laurentienne de Sudbury.
University of Toronto.
University of Windsor.

Alliance Canadienne.

L'Assoc. des Bibliothécaires du Québec.

L'Assoc. Canadienne du Tourisme.

L'Assoc. professionnelle des Industriels.

C.N.I.B.

La Commission des Ecoles Catholiques de Montréal.

Int. School; Trustees' and Ratepayers' Assoc., Inc.

The Junior League of Montreal.

The Royal Society of Canada.

The Voice of Women.

FRENCH-LANGUAGE SCHOOLING

Common Substance of Recommendations:—Provide schooling in French for French-speaking students.

Specific Points

French-language primary and secondary schools.

Recommending Bodies

Alumnae Society of McGill University.
L'Assoc. des Femmes Diplômées d'Universités.
Chevaliers de Champlain, Conseil Souverain.
Le Club Richelieu and the Rotary Club of Montreal.
La Corp. des Travailleurs Sociaux de la Province de Québec.
La Fédération des Collèges Classiques.
McGill University.
Members of the Faculties of Queens, R.M.C., Dalhousie, Kingston Collegiate, and the *Kingston Whig-Standard*.
The Montreal Board of Trade.
Quebec Assoc. of Protestant School Administration.
Individual.
L'Assoc. Canadienne des Educateurs de Langue Française.
L'Assoc. Canadienne-Française d'Educ. d'Ontario.
L'Assoc. des Enseignants Franco-Ontariens.
L'Assoc. des Inspecteurs Franco-Ontariens et des Professeurs d'Ecoles Normales.
La Commission des Ecoles Catholiques de Montréal.

FRENCH-LANGUAGE SCHOOLING (*Cont'd*)

Non-confessional French-language schools.

Provide same advantages for French-speaking students as Quebec does for English-speaking students.

If French high schools not possible, then give Separate school boards responsibility for French-language Grades IX and X.

Where insufficient students for French school, then some classes in each grade taught in French.

Experiment with Bilingual Schools

Teach some subjects in second language.

Begin at Kindergarten.

In some areas with separate religious instruction.

Encourage public support for

Separate classroom instructions in French and English, but share auditorium, gymnasium, and library.

Bilingual secondary schools.

La Fédération des Sociétés Saint Jean-Baptiste d'Ontario.
Prov. Assoc. of Protestant Teachers of Quebec.
Société d'Etudes et de Conférences.
Société Saint Jean-Baptiste, Section St. Pierre-Apôtre de Longueuil.
Union des Sociétés Saint Jean-Baptiste, Cité d'Eastview.
The United Church of Canada.
L'Université Laurentienne de Sudbury.
Individual.

The Exec. Council of the Canadian Chamber of Commerce.
Jewish Labour Committee of Canada.
L'Union des Pasteurs Canadiens-Français.
Unitarian Churches of Montreal and Pointe Claire.
The United Church of Canada.

Alliance Canadienne.

L'Assoc. des Médécins de Langue Française du Canada.
La Chambre de Commerce du Sherbrooke.
Le Conseil de la Vie Française en Amérique
Queens University Graduate Class in Comparative Federalism.
Individual.

L'Assoc. des Etudiants de Langue Française du Nord de l'Ontario.

New Democratic Party in Ontario.

Canada Junior Chamber of Commerce.
The Canadian Authors' Assoc.
The Montreal Council of Women.
Provincial Assoc. of Protestant Teachers of Quebec.
Individual.
The Junior League of Montreal.

The Junior League of Montreal.
Unitarian Churches of Montreal and Pointe Claire.
Individual.

Sir George Williams Assoc. of University Teachers.

Unitarian Churches of Montreal and Pointe Claire.

L'Accord.

Some members of U. of T. French Dept.

SCHOOL CURRICULUM

Biculturalism: Common Substance of Most Recommendations:—Design curriculum to foster biculturalism.

Specific Points

Design curriculum for needs of French-speaking students.

Literature, music and art courses should reflect biculturalism.

Recommending Bodies

L'Assoc. Canadienne des Educateurs de Langue Française.
La Commission des Ecoles Catholiques de Montréal.

Canada Junior Chamber of Commerce.

The Voice of Women.
Individual.

SCHOOL CURRICULUM (*Cont'd*)

Bilingual Committee of Canada Council to supervise preparation of bilingual books of readings on Canada, for high schools, for subsidized distribution to all Depts. of Education.

Teach Civics course, including *B.N.A. Act*, to foster respect for individual and group differences.

Second Language Instruction: Common Substance of Recommendations:—French and English should be included in the curriculum of all schools.

Specific Points

Increase second language instruction.

Optional.

Optional until first language mastered.

Teach orally in lower grades, written in higher.

Gradual introduction of English into French-language primary schools.

In six C.N.I.B. schools.

Teach conversational use.

Minimum of 3 years prior to end of high school.

Improve facilities.

Begin in primary school.

Begin earliest grades.

Begin earliest grades; raise standards.

Begin Grade I.

Begin Grade II.
Begin Grade III.

Begin Grade V.

Begin Grade VII.

Accelerate introduction.

The Royal Society of Canada.

Quebec Federation of Protestant Home and School Associations.

Recommending Bodies

L'Assoc. des Femmes de Carrières de Granby.
L'Assoc. professionnelle des Industriels.
The Canadian Manufacturers' Assoc.
La Chambre de Commerce de la Province de Québec.
The Club Richelieu and The Rotary Club, both of Montreal.
La Féd. des Sociétés Saint Jean-Baptiste.
Hamilton Junior Chamber of Commerce.
The Hellenic Canadian Society of University Graduates.
Jewish Labour Comm. of Canada.
The Junior League of Montreal.
The Montreal Board of Trade.
Provincial Assoc. of Protestant Teachers of Quebec.
Société d'Etudes et de Conférences.
Toronto French Schools.

International Institute of Metro Toronto.
The Royal Society of Canada.

Glengarry Historical Society.
Individual.

L'Assoc. Canadienne-Française d'Education d'Ontario.

Alliance Canadienne.

L'Assoc. des Commissaires d'Ecoles Catholiques de Langue Française du Canada.

C.N.I.B.

The Religious Society of Friends.

Sir George Williams University.

The United Church of Canada.

The Canadian Fed. of University Women.
Estonian Federation in Canada.
University of Windsor.

The Anglican Church of Canada.
The Canadian Authors' Assoc.
Canadian Clubs Assoc.
The Trans-Canada Alliance of German-Canadians.
The Polish Alliance of Canada.
Individual.

McGill University.
The Montreal Council of Women.
Unitarian Churches of Montreal and Pointe Claire.
Individual.

Peoples' Forward Party.
The Exec. Council of Canadian Chambers of Commerce.
Mutual Co-op League, Voice of Freedom.
Individual.
Individual.

Sarnia Junior Chamber of Commerce.

SCHOOL CURRICULUM (*Cont'd*)

Increase efforts to introduce.

Second language extra-curricular.

Compulsory in secondary school.

In primary school and compulsory in secondary school.

Begin earliest grades.

Begin Grade I.

Oral in lower grades, written in higher.

Equal time to both languages.

Begin Grade I.

Second Language Instruction Methods: Common Substance of Recommendations:—Improve instruction methods so that the second language is taught at same level of competence as the first.

Specific Points

Support school curriculum with extended use of national bilingual radio and T.V. programs.

Employ "mother-tongue" instructors.

Increase use of teaching aids.

Use films and accompanying texts of *Chez Hélène*.

Use Camps.

Use "French Assistants" for oral French in high schools (as recommended by Ontario Curriculum Institute).

Emphasize oral instructors.

Study methods of improving student motivation.

Teaching of History: Common Substance of Recommendations:—A common and impartial view of Canadian history should be imparted to all students.

Specific Points

Ontario School Trustees' and Ratepayers' Assoc. Inc.

Individual.

La Fédération des Collèges Classiques et le Conseil de Ville Le Moyne.
Le Comité Pierre Le Moyne d'Iberville.

Alumnae Soc. of McGill University.
Civil Service Fed. of Canada.
National Exec. Comm. Assoc. of United Ukrainian-Canadians.
Quebec Protestant School Administration.

New Democratic Party of Ontario.
Education Reference Books Publishers' Assoc.

The Voice of Women.
Canadian Junior Chamber of Commerce.
Canadian Polish Congress.
The National Japanese-Canadian Citizens' Assoc.

Recommending Bodies

The Anglican Church of Canada.
Civil Service Federation of Canada.
L'Union des Pasteurs Canadiens-Français.
Individual.

Canadian Junior Chamber of Commerce.
Le Club Richelieu and The Rotary Club both of Montreal.
La Commission des Ecoles Catholiques de Montréal.
Société d'Etudes et de Conférences.
Individual.

L'Accord.
L'Assoc. des Femmes Diplômées d'Universités.
McGill University.
Two Individuals.
The Junior League of Montreal.

Sarnia Junior Chamber of Commerce.

Citizens' Committee on Children.

The Quebec Camping Assoc. Inc.

Teachers of French—Welland Eastdale Secondary School.

Individual.

Individual.

Recommending Bodies

Alliance Canadienne.
L'Assoc. des Médecins de Langue Française du Canada.
La Chambre de Commerce de Sherbrooke.
La Commission des Ecoles Catholiques de Montréal.
L'Institut Canadien-Français d'Ottawa.
Polish Alliance of Canada.
Prov. Assoc. of Protestant Teachers of Quebec.
Quebec Federation of Protestant Home and School Assoc.
Trans-Canada Alliance of German-Canadians.
The Voice of Women.
Four Individuals.

SCHOOL CURRICULUM (*Cont'd*)

Schools have duty to teach respect for ethnic groups.

Teach from both French and English viewpoints.

Teach as transcending English or French viewpoint.

More emphasis on Canadian history in high schools.

Appoint commission of historians to study problem and recommend common policy.

Investigate the teaching of history.

L'Accord.

La Fédération des Amicales La Salliennes du Canada.

McGill University.

Sarnia Junior Chamber of Commerce.

Sir George Williams Assoc. of University Teachers.

Ukrainian National Youth Federation of Canada.

SCHOOLS FOR CHILDREN OF NATIONAL DEFENCE PERSONNEL

Common Substance of Recommendations:—Schooling in French equal in standing to that offered in Quebec should be available to the children of National Defence Personnel.

Specific Points

Also children of French-speaking federal employees everywhere in Canada.

Recommending Bodies

L'Assoc. Canadienne des Educateurs de Langue Française.

L'Assoc. Canadienne-Française d'Education d'Ontario.

L'Assoc. des Fonctionnaires Fédéraux d'Expression Française.

Les Clubs des Anciens du C.M.R.
Le Conseil de la Vie Française en Amérique.

STUDENT ASSISTANCE

Common Substance of the Recommendations:—Alleviate the difficulties of French-speaking students studying in an English-language system.

Specific Points

Financial aid to French-speaking students to attend French-language university if necessary to go beyond local area to do so.

Students attending university in second language write papers and exams in first language.

French-speaking students write Grade XIII in French.

French-language students use French texts and write exams in French.

Recommending Bodies

McGill University.

McGill University.

L'Assoc. des Etudiants de Langue Française du Nord de l'Ontario.
Some members of U. of T. French Dept.

La Fédération des Amicales La Salliennes du Canada.
Individual.

TEACHER PLACEMENT

Common Substance of Recommendations:—Remove religious barriers to teacher placement.

Specific Points

R.C. French teachers permitted to teach French in Protestant schools.

Recommending Bodies

Canadian Clubs Association.

Montreal Star.

Sir George Williams University.

The Voice of Women.

Individual.

McGill University.

Alumnae Society of McGill University.

TEACHER RECRUITMENT

Common Substance of most Recommendations:—Increase efforts to recruit "mother-tongue" language teachers for primary and secondary schools.

*Specific Points**Recommending Bodies*

The Anglican Church of Canada.

Canadian Clubs Association.

Some Members of U. of T. French Dept.

Individual.

TEACHER RECRUITMENT (*Cont'd*)

English-speaking universities should employ French-Canadian professors in non-language faculties.

Establish regional normal schools.

Ontario Government consult with Quebec Government.

Improve interprovincial mobility.

Call Federal-Provincial Conference to discuss increasing supply of language teachers.

Employ non-certified teachers after language proficiency test.

Bishop's University.

La Commission des Ecoles Catholiques de Montréal.

New Democratic Party of Ontario.

Ontario School Trustees' and Ratepayers' Assoc. Inc.

The Royal Society of Canada.

The Teachers of French—Welland Eastdale Secondary School.

TEACHER TRAINING

Common Substance of Recommendations:—Ensure equally well-trained French- and English-speaking teachers.

Specific Points

Establish French-speaking normal schools.

Establish normal schools to train teachers for bilingual schools.

Raise entrance qualifications.

Establish university courses in bicultural heritage and recognize as additional qualification.

Improve standards and introduce language requirements.

Recommending Bodies

L'Assoc. Canadienne des Educateurs de Langue Française.
L'Assoc. des Inspecteurs Franco-Ontariens et des Professeurs d'Ecoles Normales.
L'Université Laurentienne de Sudbury.

L'Assoc. des Commissaires d'Ecoles Catholiques de Langue Française du Canada.

Canadian Clubs Assoc.

McGill University.

University of Windsor.

TRAINING OF LANGUAGE TEACHERS

Common Substance of Recommendations:—Improve and extend training facilities.

Specific Points

Establish college to train high school teachers of French.

Establish French Dept. in training colleges.

Emulate Sorbonne course.

Establish bilingual training schools.

Emulate Swiss courses.

Call Federal-Provincial conference to discuss problems.

Emphasize importance of bilingual teachers.

As "crash" program, recognize certificates from University of Ottawa as equivalent of certificates from Teachers' Colleges.

Recommending Bodies

The Canadian Federation of University Women.
Some Members of U. of T. French Dept.

L'Assoc. Canadienne Française d'Education d'Ontario.
L'Assoc. des Enseignants Franco-Ontariens.

Catholic Womens' League of Canada.

Le Club Richelieu and The Rotary Club, both of Montreal.

Educ. Ref. Books Publishers' Assoc.

New Democratic Party of Ontario.

The Royal Society of Canada.

The Teachers of French—Welland Eastdale Secondary School.

The Teachers of French—Welland Eastdale Secondary School.

TECHNICAL AND COMMERCIAL

Common Substance of the Recommendations:—Extend facilities and ensure that they afford comparable advantages to French- and English-speaking students.

Specific Points

Institute more technical and commercial schools.

Recommending Bodies

L'Assoc. Canadienne-Française d'Education d'Ontario.

TECHNICAL AND COMMERCIAL (*Cont'd*)

Remodel programs in business education to allow larger participation of French Canadians in economic affairs.

Technical education should be available to French- and English-speaking students.

University of Windsor.

Unitarian Churches of Montreal and Pointe Claire.

TEXTS

History: Common Substance of Most Recommendations:—A joint committee of eminent English- and French-speaking scholars be asked to reappraise Canadian history and produce a common and impartial text for use in all schools.

Specific Points

Set out history of Constitution as scholastic program for all schools.

Reverse texts in both language taking respective philosophies into account.

Texts for English-speaking students written by French Canadians and vice versa.

Scholars should seek agreement on significance of parts of history tending to arouse antagonism.

Reappraised texts available to all schools in both languages.

Where practical use bilingual texts of uniform history.

Dissenting Opinion

Development of a common Canadian history text book . . . is neither a practical nor a desirable goal.

Revision of: Common Substance of Recommendations:—Revise school texts in the interest of promoting biculturalism.

Specific Points

Prepare bilingual civics texts for use in all Canadian schools.

Prepare texts on French-Canadian culture for English-language schools and vice versa.

Prepare French texts for all courses except English.

Prepare texts on biculturalism for all Canadian students.

Revise geography texts to teach Canada as a single physical unit.

Provide students with national school publications about changes in their society.

Prepare standard texts in civics, literature and geography for use in all schools.

Recommending Bodies

The Anglican Church of Canada.
The Canada Council.
The Canadian Manufacturers' Assoc.
Catholic Women's League of Canada.
Le Club Richelieu and the Rotary Club, both of Montreal.
Engineering Institute of Canada.
National Exec. Comm., Assoc. of United Ukrainian-Canadians.
The Religious Society of Friends in Canada.
Sir George Williams University.
L'Université Laurentienne de Sudbury.
Individual.

Alliance Canadienne.

Alumnae Society of McGill University.

Canadian Authors' Association.

The executive council of the Canadian Chamber of Commerce.

The Junior League of Montreal.

Quebec Federation of Protestant Home and School Associations.

Canadian Book Publishers' Council.

Recommending Bodies

L'Assoc. des Etudiants de Langue Française du Nord de l'Ontario.
The Religious Society of Friends in Canada.
Union des Sociétés Saint Jean-Baptiste, Cité d'Eastview.

Alliance Canadienne.

Alumnae Society of McGill University.

L'Assoc. des Commissaires d'Ecoles Catholiques de Langue Française du Canada.

L'Assoc. Professionnelle des Professeurs Laïques de l'Enseignement Classique.

Quebec Federation of Protestant Home and School Associations.

Individual.

Individual.

UNIVERSITIES

As Centres of Bilingualism and Biculturalism: Common Substance of Recommendations:—Encourage universities to become centres of bilingualism and biculturalism.

Specific Points

Literary exchanges between French- and English-language universities; English-language universities offer advanced courses in conversational French for students outside French Dep't., and vice versa.
English-language universities maintain French-Canadian display centres.

Encourage Co-op projects between French- and English-language universities.

English-language universities set up English summer courses similar to the French summer schools in Quebec universities.

Develop instruction in both languages and study both cultures.

English- and French-speaking professors of commerce and professional accountants introduce uniform texts in both languages.

Increase the number of courses on French Canada and inter-group relations.

Encourage bilingualism as entrance requirement.

Entrance examinations in French should be oral.

New

Recommendation

Create bilingual national university on federal territory.

Study ways and means to create a French university in Western Canada.

Recommending Bodies

Bishop's University.

McGill University.

Some Members of the U. of T. French Dept.

Sir George Williams Assoc. of University Teachers.

La Société des Comptables en Administration Industrielle et en Prix de Revient du Canada.

University of Windsor.

Individual.

Individual.

Recommending Bodies

L'Accord.

L'Assoc. Canadienne des Educateurs de Langue Française.

Substance of Recommendations to the Royal Commission on Bilingualism and Biculturalism in Other Fields as These Pertain to the Province of Ontario

IN THE FIELD OF CONSTITUTIONAL AMENDMENT

Common Substance of Most Recommendations:—Repatriate power to amend *B.N.A. Act*. Amend in the light of present circumstances.

Specific Points

Repatriate Amending Powers

Amending Powers

To the Fed. Parliament and the provinces.

To the provinces.

Use common law approach to Constitutional change. Must be reasonable in terms of whole country.

Establish a permanent Court to adjudicate Constitutional disputes.

Suggested Changes

Review if this would contribute to unity.

Amendments necessary in present situation.

Update *B.N.A. Act*.

Give provinces fiscal ability comparable to responsibility.

Provinces appoint Senators; or abolish Senate to replace with new chamber of representatives from the provinces.

Safeguards for minorities.

Elect equal number of French- and English-speaking Senators.

Appoint Comm. to recommend improvements to *B.N.A. Act*.

New Constitutions

Take into consideration "the peculiar position of Quebec".

Pact between French and English Canada.

Grant Quebec right to secede.

Grant Quebec greater authority than other provinces.

Recommending Bodies

L'Assoc. des Femmes de Carrières de Granby.
L'Assoc. des Médecins de Langue Française du Canada.
Fed. des Amicales La Salliennes du Canada.
Individual.

La Chambre de Commerce de Sherbrooke.

Corp. des Instituteurs et Institutrices Catholiques du Québec.

Edward McWhinney, Faculty of Law, University of Toronto.

Individual.

Alumnae Society of McGill University.

L'Assoc. des Médecins de Langue Française du Canada.

Sarnia Junior Chamber of Commerce.

S.C.M.

The Students' Law Society, University of Toronto.

Individual.

Individual.

Ukrainian National Youth Federation of Canada.

Canadian Slovak League.

Communist Party of Canada.

Individual.

Individual.

IN THE FIELD OF CULTURE

BOOKS AND PERIODICALS

Common Substance of Most Recommendations:—Subsidize translation costs and facilitate extensive national distribution of French- and English-language books and periodicals.

Specific Points

Establish a translating body

National distribution of "Collection Art, Vie et Sciences au Canada Française," and preparation of similar series on English achievements.

Canada Council support for bilingual libraries.

Comparable to Arts Council; distribute books to all public libraries.

Translation and publication of nursing texts.

Prepare two-language editions of lives of great Canadians.

French-language research into financial questions.

Prepare two-language editions of Canadian literature.

Finance translation through Can. Council.

National Research Council compile a French-English: English-French dictionary of technical terms and definitions, available through Queen's Printer.

Establish schools of translations.

Provide for translation of works in Humanities, and Social Sciences and Scientific Text Books.

Specific Points

Implement recommendations of O'Leary Commission; develop co-op. French and English publishing ventures.

Thorough study of factors affecting book distribution; additional public funds for academic journals publishing in both languages.

Catalogue literary achievements of Canadians.

Recommending Bodies

L'Assoc. des Médecins de Langue Française du Canada.
Bishop's University.
Canadian Book Publishers' Council.
The Canadian Federation of University Women.
The Canadian Industrial Editors' Assoc.
The United Church of Canada.

University of Toronto French Department.

Alumnae Society of McGill University.

L'Assoc. des Bibliothécaires du Québec.

L'Assoc. des Editeurs Canadiens.

The Assoc. of Nurses of the Province of Quebec.

Canada Council.

Le Canadien Crédit Institut.

Canadian Public Relations Society, Inc.

Canadian Women's Press Club.

Engineering Institute of Canada.

McGill University.

The Royal Society of Canada.

Recommending Bodies

New Democratic Party of Canada.

University of Toronto Press.

Individual.

CINEMA

Common Substance of Most Recommendations:—Utilize National Film Board to promote biculturalism.

Specific Points

Assist birth of bicultural industry.

Ensure wide distribution.

Recommending Bodies

L'Assoc. des Femmes Diplômées d'Université.
Le Club Richelieu and The Rotary Club, both of Montreal.
Individual.

Le Conseil de la Vie Française en Amérique.
Individual.

L'Accord.

CINEMA (*Cont'd*)

Reorganize with autonomous French and English Sections.

Show French-language films to French-language minority groups.

Produce full length features.

La Corp. des Instituteurs et Institutrices Catholiques de Québec.

The Montreal Council of Women.

New Democratic Party of Ontario.

CONFERENCES

Common Substance of the Recommendations:—Provide translation services for meetings of scientific and cultural societies.

Specific Points

Simultaneous translations at medical conferences.

Conferences on public affairs should be increasingly bilingual.

Simultaneous translations at all national conferences.

Recommending Bodies

La Société Canadienne des Micro-Biologistes.

L'Assoc. des Médecins de Langue Française.

Bishop's University.

La Corp. des Agronomes de la Province de Québec.

CULTURAL EXCHANGES

Common Substance of the Recommendations:—Foster and subsidize cultural exchanges.

Specific Points

Of members of professional groups.

Of artists, lecturers on the arts, exhibitions etc.

Of artists in various fields.

Of newspaper, magazine, radio and T.V. personnel.

Promote unity by "enlightened bilingualism in commercial and cultural exchanges" (sic).

Of radio and T.V. educational personnel.

English-language organizations seeking "a speaker", should invite French Canadians and vice versa.

Recommending Bodies

Alliance Canadienne.
Féd. des Amicales La Salliennes du Canada.
Some members of U. of T. French Dept.
Sir George Williams University.
Individual.

L'Assoc. des Médecins de Langue Française du Canada.

Bishop's University.

The Canadian Federation of University Women.

Canadian Women's Press Club.

Le Club Richelieu and the Rotary Club—both of Montreal.

Corp. des Instituteurs et Institutrices Catholiques du Québec.

The United Church of Canada.

GENERAL

Common Substance of Most Recommendations:—Foster and subsidize biculturalism.

Specific Points

Teach New Canadians bicultural character of Canada.

Encourage immigrants to join French- or English-language group.

Conduct a campaign to inculcate respect for both cultures.

Issue government certificates of bilingualism.

Publicize "the existence of cultural collections related to either language".

National artistic groups should present works in both languages.

Recommending Bodies

L'Assoc. Canadienne Française d'Education d'Ontario.

Byelorussian Canadian Alliance.

Fédération des Amicales La Salliennes du Canada.

La Féd. des Sociétés St. Jean-Baptiste d'Ontario.

Some members of U. of T. French Dept.

The Montreal Council of Women.

GENERAL (*Cont'd*)

Offer government prizes for cultural endeavours which foster bicultural understanding.

Individual.

Hold referendum on B & B.

Individual.

Dissenting Views

Cease public expenditure for promotion of culture or language of any minority group.

Protestant Fed. of Patriotic Women of Canada—General Council, Toronto.

One official language and school system across Canada—English.

Individual.

French Canadians must pay for French-language services.

Individual.

INSTITUTIONAL RECOGNITION

Common Substance of Most Recommendations:—Establish a permanent national institution of bilingualism and biculturalism.

*Specific Points**Recommending Bodies*

New bilingual sections of Alliance Canadienne.

L'Assoc. Canadienne des Educateurs de Langue Française.
McGill University.
Teachers of French in Secondary Schools of London District.
L'Université Laurentienne de Sudbury.

Deliberate formation of bicultural groups across the country.

Alliance Canadienne.

Permanently institutionalize present Royal Commission.

L'Accord.
L'Assoc. Biculturelle.
Unitarian Churches of Montreal and Pointe Claire.

Inter-cultural relations budget for the Arts Council.

Société d'Etudes et de Conférences.
Individual.

Permanent culture centre.

L'Assoc. des Bibliothécaires du Québec.

Federal-provincial organization responsible to P.M.

Canadian Institute of Cultural Research.
Canadian Public Relations Society, Inc.

Commission Permanente des Jeunes, to promote peaceful inter-culturalism.

Le Clan Jean Nicolet.

Federal Ministry of Cultural Affairs.

Le Club Richelieu and The Rotary Club, both of Montreal.

Bureau d'Information Canadienne-Française.

L'Institut Canadien-Français d'Ottawa.

Federal and provincial Inter-cultural Councils.

Jewish Labour Commission of Canada.

Ontario Arts Council.

New Democratic Party of Ontario.

Organization to develop French-Canadian culture.

Scouts Catholiques du Canada.

Permanent board of inter-cultural advisors responsible to P.M.

Sir G. Williams Assoc. of University Teachers.

Maintain Can. Centenary Council after 1967 as Can. Cultural Council.

Ukrainian National Youth Federation of Canada.

Two institutions, one English, one French.

Individual.

"Bicultural Fund" through the Canada Council.

Individual.

LIBRARIES

Common Substance of the Recommendations:—Libraries should reflect biculturalism.

*Specific Points**Recommending Bodies*

Toronto needs a French-language library.

L'Alliance Française de Toronto.

Bilingual depts. in all public libraries.

Catholic Women's League of Canada.

Bilingual civil service libraries.

Individual.

CONCERNING FRENCH AS AN OFFICIAL LANGUAGE

Common Substance of Most Recommendations:—Recognize French as an official language.

Specific Points

Extend minority rights of English Canadians in Quebec to French Canadians in other provinces.

In the law courts.

In the law courts—simultaneous translation.
In the law courts—interpreters.

Constitutional bilingualism.

In all municipal and parliamentary proceedings and the law courts; print these in both languages.

In all provincial parliaments and the law courts.

Addendum to Bill of Rights, giving each person right to speak language of his choice.

Declare an official French text of the *B.N.A. Act* of equal judicial value to the English text.

Recognize two official languages and use in appropriate demographic areas.

All should acquire a working knowledge of both official languages.

In public affairs throughout Canada.

To adequately recognize French, prevent multilingualism.

National Declaration of Purpose, endorsed by Federal Government and all provinces offering bi-national character of Canada.

Divide Canada into "official-language zones".

National leadership candidates must be fluent in both languages.

Dissenting Views

The recognition of one official language (English) would solidify Canada.

Oppose any proposal to extend French or English more widely in Canada.

Recommending Bodies

Alliance Canadienne.
L'Assoc. des Femmes de Carrières de Granby.
Canada Polish Congress.

Anglican Church of Canada.
L'Assoc. des Etudiants de Langue Française du Nord de l'Ontario.
L'Assoc. des Femmes Diplômées des Universités.
La Com. des Ecoles Catholiques de Montréal.
Conseil de Ville Le Moyne.
Fédération des Amicales La Salliennes du Canada.
New Democratic Party of Ontario.
S.C.M.
Individual.

L'Accord.
L'Assoc. Culturelle Canadienne-Française de Timmins.
L'Assoc. des Médecins de Langue Française du Canada.
Junior Bar Assoc. of Montreal.
The Montreal Council of Women.
Société St. Jean-Baptiste, Section St. Pierre Apôtre de Longueuil.

Carleton University Staff.
Sarnia Junior Chamber of Commerce.
Sir George Williams University.
L'Université Laurentienne de Sudbury.
Individual.

McGill University.
Provincial Assoc. of Protestant Teachers of Quebec.
Union des Sociétés St. Jean-Baptiste, Cité d'Eastview.
Individual.

L'Assoc. Canadienne des Educateurs de Langue Française.
Corp. des Instituteurs et Institutrices Catholiques du Québec.

Le Conseil de la Vie Française en Amérique.

La Corp. des Travailleurs Sociaux de la Province de Québec.

La Corp. des Travailleurs Sociaux de la Province de Québec.

Engineering Institute of Canada.

Members of the Faculties of Queen's, R.M.C., Dalhousie, Kingston Collegiate and the Kingston Whig-Standard.

Montreal Star.

New Democratic Party of Ontario.

L'Union des Pasteurs Canadiens-Français.

Unitarian Churches of Montreal and Pointe Claire.

Recommending Bodies

Canadian Protestant League, Ontario.

Caughnawaga Defence Committee.

CONCERNING FRENCH AS AN OFFICIAL LANGUAGE (*Cont'd*)

Section 133 of the *B.N.A. Act* should not be extended. The language to be used . . . must remain choice of each provincial legislature.

Canada should retain original terms of *B.N.A. Act* with regard to language.

Keep Section 133 of *B.N.A. Act*.

Education Reference Book Publishers' Assoc.

Glengarry History Society.

Individual.

CONCERNING THE USE OF FRENCH IN BUSINESS AND INDUSTRY

General

Common Substance of Most Recommendations:—Encourage business and industry to meet the needs of French-speaking consumers: give French-speaking employees equal opportunities.

Specific Points

Bilingual signs and advertisements.

Significant proportions of French-speaking employees.

Bilingual public utilities.

Recommending Bodies

Canadian Credit Men's Associations.

S.C.M.

Unitarian Churches of Montreal and Pointe Claire.

La Chambre de Commerce de Magog.

La Chambre de Commerce de la Province de Québec.

Fédération des Amicales La Salliennes du Canada.

Two Individuals.

Alliance Canadienne.

La Chambre de Commerce de la Province de Québec.

The Montreal Council of Women.

L'Assoc. Canadienne des Educateurs de Langue Française.

Foster Biculturalism

Regularly exchange English- and French-speaking personnel; encourage all to understand both cultures.

Ensure equal employment and advancement opportunities for French-speaking personnel.

Establish programs for employees to become bilingual.

Co-operate in B & B programs: financial assistance to transferred Quebec employees to ensure French-language education for children.

Engineering Institute of Canada.

La Société des Comptables en Administration et en Prix du Revient du Canada.

Individual.

The Montreal Board of Trade.

Unitarian Churches of Montreal and Pointe Claire.

Engineering Institute of Canada.

McGill University.

Tourism and Communication

Common Substance of the Recommendations:—Encourage travel and communication between English- and French-speaking Canada; and to this end employ more French-speaking personnel, and print signs, information etc., in both languages.

Specific Points

Use international road signs.

All public signs in Ottawa bilingual.

Recommending Bodies

L'Assoc. Culturelle Canadienne-Française de Timmins, Ontario.

L'Assoc. des Femmes Diplômées des Universités.

Canadian Public Relations Society, Inc.

Montreal Star.

The United Church of Canada.

Four Individuals.

L'Assoc. Canadienne du Tourisme.

L'Université Laurentienne de Sudbury.

New Democratic Party of Ontario.

Members of the Faculties of Queens, R.M.C., Dalhousie, Kingston Collegiate and *Kingston Whig-Standard*.

IN THE FEDERAL AND PROVINCIAL CIVIL SERVICE

Common Substance of the Recommendations:—Increase the use of French in the Federal and Provincial Civil Service.

Specific Points

All civil servants and persons using the service have the right to speak in mother tongue.

All publications in both languages.

In recruitment and promotions, insist vigorously on linguistic ability.

Bilingualism necessary if 50% of public being served speaks French or English.

Pay salaries commensurate with additional language skills.

Entrance examinations should be offered in both languages.

All civil servants should have right and opportunity to work in mother tongue.

Arrange temporary interchange of bilingual middle- and senior-level civil servants between French- and English-speaking provinces.

Good working knowledge of both languages necessary in bilingual areas.

Develop exchange program between the provinces of English- and French-speaking civil servants.

Eventually all should be expected to understand both official languages.

Bilingualism desirable.

All should know some French. Bilingualism mandatory in bilingual areas.

Stimulate bilingualism.

Divide into linguistic zones. Declare zone bilingual if 30% of population speaks "other" national language.

Have responsible bilingual person on staff of all institutions of a public service nature.

Divide Canada into four linguistic regions:

- 1) Ontario and Western Canada: English-speaking.
- 2) Quebec, adjacent regions of Ontario, N.B., and Labrador: French-speaking.
- 3) Maritimes: English-speaking.
- 4) Ottawa: Bilingual.

Provide civil service accordingly.

NOTE: Further recommendations concerning the use of French in the Federal Civil Service are available.

Recommending Bodies

Section St. Pierre Apôtre de Longueuil, Société Saint Jean-Baptiste.

L'Accord.

L'Assoc. des Fonctionnaires Fédéraux d'Expression Française.

Civil Service Federation of Canada.

The Club Richelieu and The Rotary Club—both of Montreal.

The Club Richelieu and The Rotary Club—both of Montreal.

La Comm. des Ecoles Catholiques de Montréal.

Engineering Institute of Canada.

The Executive Council of the Canadian Chamber of Commerce.

McGill University.

Provincial Assoc. of Protestant Teachers of Quebec.

The Religious Society of Friends in Canada.

Sociétés Canadienne-Française de Windsor.

L'Université Laurentienne de Sudbury.

Individual.

Individual.

La Chambre de Commerce, Richelieu-St. Mathias.

IN MUNICIPAL AFFAIRS

Common Substance of the Recommendations:—Increase the use of French in Municipal Affairs.

Specific Points

Official publications should be bilingual.

All employees should be bilingual.

Bilingual in areas with minority of 10%.

In centres of 50,000 or more, have minimum number of competent bilingual persons in all departments.

All employees and persons using the services have right to speak in mother tongue.

Recommending Bodies

L'Assoc. Culturelle Canadienne-Française de Timmins.

L'Assoc. des Fonctionnaires Fédéraux d'Expression Française.

Conseil de Ville Le Moyne.

The Montreal Council of Women.

Société St. Jean-Baptiste, Section St. Pierre-Apôtre de Longueuil.

PROPOSED NEW ONTARIO GOVERNMENT SERVICES

Common Substance of the Recommendations:—Establish additional government services in the interests of bilingualism and biculturalism.

Specific Points

Provide a translation service.

Institute continuing investigation of and reporting on implications of bilingualism in the civil service and in the services offered to the public.

Institute a Department of French-Canadian Affairs.

Recommending Bodies

Carleton University Staff.

New Democratic Party of Ontario.

Individual.

IN THE PROVINCIAL CIVIL SERVICE

Common Substance of the Recommendations:—Increase the use of French in the Provincial Civil Service.

Specific Points

Official publications should be bilingual.

All government employees should be bilingual.

Civil Service exams should be in both languages.

Those in contact with French-speaking persons should have adequate knowledge of French.

Minimum number of competent bilingual persons in all departments.

Encourage bilingualism among civil servants.

Employment interview in French or English as desired by applicant.

Language instruction in working hours.

Bilingual in areas with minority of 10%.

All should have a working knowledge of French and English, but unfair to demand bilingualism before education system makes this possible.

Second language proficiency should be employment factor in applicable areas.

Separately or in co-operation with other provinces, design a program of B & B for civil servants.

Encourage bilingualism among civil servants.

Recommending Bodies

L'Assoc. Culturelle Canadienne-Française de Timmins, Ontario.
L'Assoc. des Inspecteurs Franco-Ontariens et des Professeurs d'Ecoles Normales.
Union des Sociétés St. Jean-Baptiste, Cité d'Eastview.
Individual.

L'Assoc. des Fonctionnaires Fédéraux d'Expression Française.
L'Assoc. Canadienne-Française d'Education d'Ontario.

L'Assoc. Canadienne des Educateurs de Langue Française.

L'Assoc. des Femmes Diplômées des Universités.
The Montreal Council of Women.

The Canadian Federation of University Women.

The Canadian Manufacturers' Association.

Civil Service Federation of Canada.

Conseil de Ville Le Moyne.

Education Reference Book Publishers' Assoc.

Members of the Faculties of Queens, R.M.C., Kingston Collegiate.

McGill University.

Individual.

IN THE FIELD OF MASS COMMUNICATION NEWSPAPERS

Common Substance of Most Recommendations:—Clear and objective reporting in the interests of biculturalism.

Specific Points

Recommending Bodies

L'Assoc. des Femmes de Carrières de Granby.
The Canadian Manufacturers' Association.
Société d'Etudes et de Conférences.
Union des Sociétés St. Jean-Baptiste, Cité d'Eastview.
Individual.

IN THE FIELD OF MASS COMMUNICATION NEWSPAPERS (*Cont'd*)

More exchange of opinion through "guest" editorials and multi-documented articles.
Broader mutual coverage in and outside Quebec.

Canadian Women's Press Club.

Financial Assistance

For French-language publications in Ontario.

L'Assoc. des Etudiants de Langue Française du Nord de l'Ontario.
L'Université Laurentienne.

To establish a French-language news agency.

La Féd. des Sociétés St. Jean-Baptiste d'Ontario.

Enable Canadian Press to become an agency for features etc., stressing common values of Canadians.

New Democratic Party of Ontario.

Free air-mail distribution of daily papers.

S.C.M.

RADIO AND TELEVISION

Common Substance of Most Recommendations:—Extend bilingual transmission in the interests of biculturalism.

Specific Points

Recognize moral responsibility for bilingualism and biculturalism.

Care in reporting events involving dissident elements.

Encourage biculturalism.

Ensure both languages correctly spoken.

Foster tolerance.

Bilingual radio and television throughout Canada.

Recommending Bodies

Alliance Canadienne.

The Canadian Manufacturers' Association.

Canadian Public Relations Society, Inc.
L'Univeristé Laurentienne de Sudbury.
Individual.

Société d'Etudes et de Conférences.

Unitarian Churches of Montreal and Pointe Claire.

Recommending Bodies

L'Assoc. Canadienne des Educateurs de Langue Française.
L'Assoc. des Médecins de Langue Française.
La Chambre de Commerce de Sherbrooke.
Le Club Richelieu and The Rotary Club—both of Montreal.
La Corp. des Travailleurs Sociaux de la Province de Québec.
Société d'Etudes et de Conférences.
Union des Sociétés St. Jean Baptiste, Cité d'Eastview.
The Voice of Women.
Three Individuals.

Services for French Canadians

Ensure for all.

Bilingual television in suitable areas.

Use minority language in given area.

French-language programs on English networks at prime hours, at least once or twice a week.

Give provinces right to establish networks where desirable: program content in co-operation with Dept. of Education.

French-language programs in Ontario

At desirable hours in Windsor.

Le Conseil de la Vie Française en Amérique.
The Montreal Council of Women.

The Junior League of Montreal.

The Royal Society of Canada.

Teachers of French in Secondary Schools in London district.

Corp. des Instituteurs et Institutrices Catholiques du Québec.

L'Assoc. des Etudiants de Langue Française du Nord de l'Ontario.
L'Université Laurentienne.

Société Canadienne-Française de Windsor.

RADIO AND TELEVISION (*Cont'd*)*C.B.C.*

Encourage biculturalism.

Co-operate with National Film Board to provide fuller knowledge of Canada.

Transmit B & B programs with instruction in both languages.

Programs in primary language of area.

Expand policy of transmitting in both languages. Give greater financial responsibility.

Include French phrases in English programs.

Establish a French-language network in Ontario.

Re-establish *Rhapsody*.

Radio Canada

Do necessary research to make bilingual.

Give l'Union a 15 minute French-language program.

Provide elementary instructions in French. Provide programs of wide interest to French Canadians.

Exchange programs with English networks.

Board of Broadcast Governors

Give responsibility to encourage bilingual programs on private networks.

Strengthen its powers.

Exchange Programs

Between French- and English-language networks.

Subsidize between French- and English-speaking provinces.

L'Assoc. des Femmes Diplômées des Universités.
Members of the Faculties of Queens, R.M.C., Kingston Collegiate.
Individual.

Education Reference Books Publishers' Assoc.

McGill University.

Members of the Faculties of Queens, R.M.C., Kingston Collegiate.

New Democratic Party of Ontario.

Senior Protestant School Administrators of the Province of Quebec.

Teachers of French in Secondary Schools of London district.

Ukrainian National Youth Federation of Canada.

L'Accord.

L'Union des Pasteurs Canadiens-Français.

Union des Sociétés St. Jean-Baptiste, Cité d'Eastview.

McGill University.

New Democratic Party of Ontario.

Recommending Bodies

The Anglican Church of Canada.

Byelorussian Canadian Alliance.

CONCERNING OTTAWA AS A FEDERAL DISTRICT

Common Substance of Most Recommendations:—Constitute Ottawa and the surrounding area as a bilingual and bicultural Federal District.

*Specific Points**Recommending Bodies*

L'Accord.
Alliance Canadienne.
L'Assoc. Canadienne des Educateurs de Langue Française.
L'Assoc. Canadienne du Tourisme.
L'Assoc. des Femmes Diplômées des Universités.
L'Assoc. Canadienne-Française d'Educ. d'Ontario.
L'Assoc. des Femmes de Carrières de Granby.
Canadian Junior Chamber of Commerce.
Canadian Slovak League.
Le Conseil de la Vie Française en Amérique.
Education Reference Book Publishers' Assoc.
La Fédération des Collèges Classiques.
I.O.D.E.
Members of the Faculties of Queens, R.M.C., Kingston Collegiate and Kingston-Whig-Standard.
McGill University.

CONCERNING OTTAWA AS A FEDERAL DISTRICT (*Cont'd*)

All governments co-operate to make "cultural and linguistic background more attractive".

Include Ottawa, Hull, Eastview, towns of Gatineau and Pointe Gatineau and parts of counties of Carleton and Gatineau. Give representation by population in Federal Parliament.

Recognize both languages in public affairs in Ottawa.

Provincial Assoc. of Protestant Teachers of Quebec.
Queens University Graduate Class on Comparative Federalism.
Sir George Williams University.
Société d'Etudes et de Conférences.
The Students Law Society, U. of T.
Eight Individuals.

Civil Service Assoc. of Canada.

New Democratic Party of Ontario.

S.C.M.

CONCERNING SPECIAL STATUS FOR QUEBEC

Common Substance of Most Recommendations:—Constitute Quebec as an Associate State.

Specific Points

Recognize two nations in spirit and in practice.

Full judicial and economic responsibility to guard distinctive language and culture.

Treaty-making powers.

Have charge of own immigration.

Withdraw from all joint economic programs.

Treaty-making powers.

Keep final appeal in civil cases in Quebec.

All parties concerned appoint judges to interpret the Constitution.

Treaty-making powers.

Quebec Parliament form a Committee to re-draft Section 133 of *B.N.A. Act* as a proclamation of a French unilingual Quebec.

Defend French culture.

Independent State

Declare Quebec an independent state but keep strong economic ties with Canada.

Recommending Bodies

La Société St. Jean-Baptiste de Montréal.

La Chambre de Commerce de Chicoutimi.
Education Reference Books Publishers' Assoc.
Fédération des Amicales La Salliennes du Canada.
Corp. des Instituteurs et Institutrices Catholiques du Québec.

Corp. des Instituteurs et Institutrices Catholiques du Québec.

Chevaliers de Champlain, Conseil Souverain.

Le Comité le Moyne d'Iberville.

Queens University Graduate Class on Comparative Federalism.

La Presse Etudiante Nationale.

NOTE: This classification is submitted with reservations. Whether the recommendations imply Associate Statehood, and what is meant by the term, is not always clear.

